Federal Register

12–7–07 Friday
Vol. 72 No. 235 Dec. 7, 2007

Pages 69137–69568

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 72 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:	
Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, December 11, 2007
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008

Printed on recycled paper.

Contents

Federal Register

Vol. 72, No. 235

Friday, December 7, 2007

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http:// listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register

Vol. 72, No. 235

Friday, December 7, 2007

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2007–0133]

Mediterranean Fruit Fly; Add Portions of Santa Clara and Solano Counties, CA, to the List of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding portions of Santa Clara and Solano Counties, CA, to the list of quarantined areas and restricting the interstate movement of regulated articles from those areas. We are also amending the definitions of the terms *core area* and *day degrees* and adding blueberries (*Vaccinium* spp.) to the list of articles regulated for Mediterranean fruit fly. These actions are necessary to prevent the artificial spread of Mediterranean fruit fly to noninfested areas of the United States and to update the regulations to reflect current science and practices.

DATES: This interim rule is effective December 7, 2007. We will consider all comments that we receive on or before February 5, 2008.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2007–0133 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0133, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0133.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, Domestic Coordinator, Fruit Fly Exclusion and Detection Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1234; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly (Medfly, *Ceratitis capitata* [Wiedemann]) is one of the world's most destructive pests of numerous fruits and vegetables. The short life cycle of the Medfly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Mediterranean fruit fly regulations, contained in 7 CFR 301.78 through 301.78–10 (referred to below as the regulations), were established to prevent the spread of Medfly into noninfested areas of the United States. Section 301.78–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which Medfly has been found by an inspector, in which the Administrator has reason to believe that Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which Medfly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.78–3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles and (2) the designation of less than the entire State as a quarantined area will prevent the interstate spread of Medfly.

Recent trapping surveys by inspectors of California State and county agencies have revealed that portions of Santa Clara and Solano Counties, CA, are infested with Medfly.

State agencies in California have begun an intensive Medfly eradication program in the quarantined areas in Santa Clara and Solano Counties. Also, California has taken action to restrict the intrastate movement of regulated articles from the quarantined areas.

Accordingly, to prevent the spread of Medfly into noninfested areas of the United States, we are amending the regulations in § 301.78–3 by designating portions of Santa Clara and Solano Counties, CA, as quarantined areas for Medfly. The quarantined areas are described in the regulatory text at the end of this document.

Section 301.78–1 of the regulations currently defines the term *core area* as ''the 1 square mile area surrounding each property where Mediterranean fruit fly has been detected.'' We have determined that it is necessary to amend the definition of *core area* because the use of GPS technology allows us to more accurately measure the distance from a positive detection site of Medfly. Therefore, we are revising the definition of the term *core area* to read ''the area within a circle surrounding each detection using a ½-mile radius with the detection as a center point.''

The regulations currently define the term *day degrees* as a mathematical construct combining average temperature over time that is used to calculate the length of a Mediterranean fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F.: [(Minimum Daily Temp + Maximum Daily Temp)/2] − 54° = Day Degrees. We have determined that it is necessary to amend the definition of *day degrees* because the use of weather service data entered into a computer model enables us to more accurately measure day degree accumulation based upon the latest biological information than was previously possible. Therefore, we are revising the definition of *day degrees* to read ''a unit of measurement used to measure the amount of heat required to further the development of fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process specific for each fruit fly species.''

We are also adding blueberries (*Vaccinium* spp.) to the regulated articles list in § 301.78–2 because recent scientific information supports the conclusion that blueberries are susceptible to infestation by Medfly; therefore, the movement of blueberry fruit from infested areas poses a pest risk. Supporting documentation regarding the host status of blueberries can be found at: *http://www.aphis.usda.gov/plant_health/plant_pest_info/fruit_flies/index.shtml*.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent Medfly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see DATES above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the Medfly regulations by adding portions of Santa Clara and Solano Counties, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from the quarantined areas. Within the quarantined areas there are approximately 251 small entities that may be affected by this rule. These include 125 markets (including swap meets and farmer's markets), 53 growers, 24 shippers, 23 nurseries, 17 yard maintenance firms, 8 packers/processors, and 1 green waste hauler. These 251 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, few of these small entities move regulated articles interstate during the normal course of their business, nor do consumers of products purchased from those entities generally move those products interstate.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Section 301.78–1 is amended by revising the definitions of *core area* and *day degrees* to read as follows:

§ 301.78–1 Definitions.

* * * * *

Core area. The area within a circle surrounding each detection using a 1/2-mile radius with the detection as a center point.

Day degrees. A unit of measurement used to measure the amount of heat required to further the development of fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process specific for each fruit fly species.

* * * * *

§ 301.78–2 [Amended]

■ 3. In § 301.78–2, paragraph (a) is amended by adding, in alphabetical order, an entry for ''Blueberry (*Vaccinium* spp.)''.

■ 4. In § 301.78–3, paragraph (c) is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas:

California

Santa Clara County. That portion of Santa Clara County in the San Jose area bounded by a line as follows: Beginning at the intersection of Interstate 880 and Montague Expressway; then northeast and east on Montague Expressway to Trade Zone Boulevard; then southeast and northeast on Trade Zone Boulevard to Cropley Avenue; then northeast on Cropley Avenue to Old Piedmont Road; then northwest on Old Piedmont Road to Berryessa Creek; then northeast, east, southeast, northeast, southeast, northeast, east, and northeast along Berryessa Creek to its intersection with Berryessa Creek Branch; then southeast from Berryessa Creek Branch along an imaginary line to the intersection of Sierra Road and the City of San Jose boundary line; then northeast, southeast, southwest, southeast, northeast, southeast, southwest, and southeast along the City of San Jose boundary line to Alum Rock Falls Road;

then southeast, northeast, southeast, southwest, southeast, northeast, southeast, northeast, east, southeast, southwest, northwest, southwest, southeast, southwest, northwest, southwest, southeast, southwest, northwest, west, southeast, northwest, west, and southwest on Alum Rock Falls Road to State Highway 130; then southeast on State Highway 130 to Quimby Road; then southwest, northwest, southwest, northwest, southwest, and south on Quimby Road to Buckeye Ranch; then southeast and southwest on Buckeye Ranch to its southwesternmost point; then southwest from that point along an imaginary line to the northeasternmost point of Fowler Road; then southwest, southeast, east, southeast, northwest, southwest, southeast, south, west, northwest, and west on Fowler Road to Yerba Buena Road; then south and west on Yerba Buena Road to San Felipe Road; then southeast on San Felipe Road to Farnsworth Drive; then southwest, northwest, and southwest on Farnsworth Drive to Silver Creek Valley Road; then southwest, southeast, southwest, and west on Silver Creek Valley Road to Blossom Hill Road; then west and southwest on Blossom Hill Road to State Highway 82; then northwest on State Highway 82 to Southside Drive; then southeast from the intersection of State Highway 82 and Southside Drive along an imaginary line to the northeasternmost point of Hillsdale Drive; then southwest on Hillsdale Drive to Hillsdale Avenue; then west on Hillsdale Avenue to State Highway 87; then northwest on State Highway 87 to Interstate 880; then northeast and north on Interstate 880 to the point of beginning.

Solano County. That portion of Solano County in the Dixon area bounded by a line as follows: Beginning at the intersection of Boyce Road and Putah Creek Road; then northeast, southeast, and northeast on Putah Creek Road to Stevenson Bridge Road; then northeast and northwest on Stevenson Bridge Road to Putah Creek; then southeast along Putah Creek to the south fork of Putah Creek; then southeast along the south fork of Putah Creek to Old Davis Road; then south, west, and south on Old Davis Road to Tremont Road; then east on Tremont Road to Bulkley Road; then south on Bulkley Road to Midway Road; then west on Midway Road to Sikes Road; then south on Sikes Road to Swan Road; then west on Swan Road to Bunker Station Road; then south on Bunker Station Road to Binghamton Road; then west on Binghamton Road to State Highway 113; then north on State Highway 113 to Hawkins Road; then west on Hawkins Road to Lewis Road; then north on Lewis Road to Weber Road; then west and northwest on Weber Road to North Meridian Road; then northwest and north on North Meridian Road to Sweeney Road; then west on Sweeney Road to Halley Road; then north, southwest, and northwest on Halley Road to Wolfskill Road; then southwest on Wolfskill Road to Boyce Road; then northwest on Boyce Road to the point of beginning.

Done in Washington, DC, this 30th day of November 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–23770 Filed 12–6–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. AMS–FV–07–0082; FV07–983–1 IFR]

Pistachios Grown in California; Changes in Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the handling requirements currently authorized under the California pistachio marketing order (order). The order regulates the handling of pistachios grown in California and is administered locally by the Administrative Committee for Pistachios (committee). This rule suspends the minimum quality requirements, including maximum defects and minimum sizes, for California pistachios. This will reduce handler costs and provide handlers more flexibility in meeting customer needs.

DATES: Effective December 10, 2007; comments received by February 5, 2008 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Terry.Vawter@usda.gov* or *Kurt.Kimmel@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 983 (7 CFR part 983), regulating the handling of pistachios grown in California, hereinafter referred to as the ‘‘order.’’ The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ‘‘Act.’’

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule changes the handling requirements for pistachios currently authorized under the order. This rule suspends the minimum quality requirements, including maximum defects and minimum sizes, for California pistachios. This will reduce handler costs and provide handlers more flexibility in meeting customer needs. This action was recommended by the committee.

Section 983.39 establishes minimum quality levels for pistachios, including maximum defects and minimum sizes permitted under the order. Under § 983.46, the Secretary may modify, suspend, or make rules and regulations to implement §§ 983.38 through 983.45 based upon a recommendation by seven concurring committee members or other available information.

The quality and size requirements have been in effect for California pistachios since the order's inception in 2004. Evidence provided at the promulgation hearing suggested that there was a direct link between lower-quality pistachios and the incidence of aflatoxin contamination (see 68 FR 45990). Aflatoxin is one of a group of mycotoxins produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus.* Aflatoxins are naturally-occurring in the field and can be further spread in improperly processed and stored nuts, dried fruits, and grains. The data presented at the hearing was based on aflatoxin analyses of pistachios with different defects. Although the data also indicated that the levels of aflatoxin associated with each defect varied widely, researchers attributed this to variability among the samples.

As further data was collected in 2005 and 2006, University of California researchers concluded that variability in aflatoxin levels seen in previous studies may have been due to geographic variability [1 2]. Aflatoxin contamination is more prevalent in pistachios produced in the northern San Joaquin Valley, while quality defects, largely due to insect damage, are less prevalent. The opposite is true for the southern San Joaquin Valley. It is now believed that these differences in aflatoxin contamination between the growing areas are due to differences in climate. The northern San Joaquin Valley has more aflatoxin contamination because its cooler temperatures and greater moisture are more conducive to *Aspergillus* and aflatoxin development, but less conducive to insect population and damage. However, in the southern San Joaquin Valley, there is a higher incidence of insect damage and a much lower incidence of aflatoxin contamination because of the drier environment and higher temperatures. Thus, recent research suggests that aflatoxin occurrence in pistachios may be attributable to climatic factors.

Additionally, growers and handlers are reporting unexpected problems with the size of pistachios this season, as well as with staining of the nut shell from the hull. Pistachios are smaller than usual, and the large crop has resulted in a large percentage of pistachios which may not meet the requirements of the order because the sizes are smaller than currently authorized, which is 30/64ths of an inch. Staining is a problem this season due to unseasonable humidity and spotty rains on August 26th and 30th. The moisture wet the outer hull, and the hull then stained the pistachio shell. Dark stains are an external defect, which affects overall pistachio quality.

Thus, the committee recommended suspending the minimum quality requirements, which include maximum defects and minimum sizes, under the order. This will reduce handler costs and provide handlers more flexibility in meeting customer needs. Suspending these requirements also necessitates modifications to other sections of the order and regulations that reference minimum quality and size requirements. Accordingly, this rule partially suspends or amends language in §§ 983.6, 983.7, 983.31, 983.38, 983.40, 983.41, 983.42, 983.45, 983.138, 983.143, and 983.147 of the order; and suspends §§ 983.19, 983.20, 983.39, and 983.141 in their entirety.

Additionally, the third sentence in § 983.11(b), and all of § 983.71 are removed because the committee's State counterpart, the California Pistachio Commission, has been terminated and there is currently no relationship between the two organizations.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses would not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 740 producers in the production area, and 50 handlers of California pistachios subject to regulation. The Small Business Administration (SBA) (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than $750,000, and defines small agricultural service firms those whose annual receipts are less than $6,500,000. Of the 740 producers, approximately 722 have annual receipts of less than $750,000. Forty-two of the 50 handlers subject to regulation have annual pistachio receipts of less than $6,500,000. Thus, the majority of producers and handlers of California pistachios may be classified as small entities.

This rule changes the handling requirements authorized under the order. This rule suspends the minimum quality requirements, including maximum defects and minimum sizes, for California pistachios. Authority for this action is provided in § 983.46.

Regarding the impact on affected entities, suspending the minimum quality requirements will decrease handler inspection costs. The committee currently estimates that the direct costs to obtain inspection average approximately $50.00 per lot. The average lot is approximately 44,000 pounds. With over 100,000,000 pounds shipped domestically, the direct costs for inspection for approximately 2,300 lots could total $115,000 for the industry. The direct costs do not include handler staff time in preparing samples, and handler storage and recordkeeping costs associated with inspected pistachios.

The committee considered alternatives to suspending the minimum quality requirements. Some producers were concerned that this could give handlers too much latitude in their operations. Other producers commented that handlers' customers would likely dictate product quality and prevent shipment of substandard pistachios into the market. Ultimately, the majority of committee members supported the changes.

[1] Doster, M.A., T.J. Michailides, L.D. Boeckler, and D.P. Morgan, 2006. Development of expert systems and predictive models for aflatoxin contamination in pistachios. In California Pistachio Industry Annual Report Crop Year 2005–2006, pg. 101–102.

[2] Doster, M.A., T.J. Michailides, L.D. Boeckler, and D.P. Morgan, 2007. Prediction of aflatoxin contamination and a survey of fungi producing Ochratoxin A in California pistachios. In California Pistachio Industry Annual Report Crop Year 2006–2007, pg. 109–110.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the form ACP–5, ''Minimal Testing'' being suspended by this rule was previously approved by the Office of Management and Budget and assigned OMB No. 0581–0215, Pistachios Grown in California, for 1 burden hour. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the committee meetings where this action was discussed were widely publicized throughout the pistachio industry and all interested persons were encouraged to attend the meetings and participate in the committee's deliberations. Like all committee meetings, these were public meetings, and entities of all sizes were encouraged to express their views on these issues. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab/html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the handling requirements currently prescribed under the order. Any comments received will be considered prior to finalization of this rule.

The order provisions suspended by this action no longer tend to effectuate the declared policy of the Act. Accordingly, after consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) It relaxes quality requirements currently in effect; (2) handlers are already receiving 2007–08 crop pistachios, and this rule should apply to as much of the 2007–08 crop as possible; (3) handlers are aware of these changes, which were discussed at two public meetings; and (4) this rule has a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 983

Pistachios, Marketing agreements and orders, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 983 is amended as follows:

PART 983—PISTACHIOS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 983 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§§ 983.19, 983.20, 983.39, 983.141 [Amended]

■ 2. In part 983, §§ 983.19, 983.20, 983.39, and 983.141 are suspended indefinitely.

§ 983.6 [Amended]

■ 3. In § 983.6, the words ''free of internal defects as defined in § 983.39(b)(4) and (5)'' are suspended indefinitely.

§ 983.7 [Amended]

■ 4. In § 983.7, the words ''and minimum quality'' are suspended indefinitely.

§ 983.11 [Amended]

■ 5. In § 983.11, paragraph (b), the third sentence is removed.

§ 983.31 [Amended]

■ 6. In § 983.31, the words ''and/or minimum quality'' are suspended indefinitely.

§ 983.38 [Amended]

■ 7. In § 983.38, paragraph (d)(1), the words ''and divided between those pistachios for aflatoxin testing and those for minimum quality testing'' are suspended indefinitely.

■ 8. In § 983.38, paragraph (d)(4), the word '', grade'' is suspended from the penultimate sentence indefinitely.

§ 983.40 [Amended]

■ 9. Paragraph (a) of § 983.40 is suspended indefinitely.

■ 10. In § 983.40, paragraph (b), the words ''and/or the minimum quality'' are suspended from the first sentence indefinitely, the words ''either'' and ''or the minimum quality'' are suspended from the second sentence indefinitely, and the words '', and the handler, under the supervision of an inspector, shall send the failed lot notification reports for the lots that do not meet the minimum quality requirements to the committee'' are suspended from the third sentence indefinitely.

■ 11. In § 983.40, paragraph (c), the fifth sentence is suspended indefinitely.

■ 12. Paragraph (e) of § 983.40 is suspended indefinitely.

§ 983.41 [Amended]

■ 13. Paragraph (b) of § 983.41 is suspended indefinitely.

§ 983.42 [Amended]

■ 14. In § 983.42, the words ''and minimum quality certificate'' are suspended indefinitely.

§ 983.45 [Amended]

■ 15. In § 983.45, the words ''and minimum quality requirements,'' the first ''§ ,'' and ''and 983.39'' are suspended indefinitely.

§ 983.71 [Removed]

■ 16. Section 983.71 is removed.

■ 17. Section 983.138 is revised to read as follows:

§ 983.138 Samples for testing.

Prior to testing, a sample shall be drawn from each lot to be used to test pistachios for aflatoxin. The lot sample shall be of sufficient weight to comply with Tables 1 and 2 of § 983.38.

§ 983.143 [Amended]

■ 18. Section 983.143 is amended by revising paragraph (b) to read as follows:

§ 983.143 Reinspection.

(a) * * *

(b) Each handler who handles pistachios shall cause any lot or portion of a lot initially certified for aflatoxin, and subsequently materially changed, to be reinspected for aflatoxin and certified as a new lot or new lots: *Provided*, That, handlers exempted from order requirements under § 983.170 are exempt from all reinspection requirements.

■ 19. In § 983.147, paragraph (a) is revised to read as follows:

§ 983.147 Reports.

(a) *ACP–2, Failed Lot Notification.* Each handler shall notify the Administrative Committee for Pistachios (committee) of all lots that fail to meet the order's maximum aflatoxin requirements by completing section A of this form. Handlers shall furnish this report to the committee no later than 10 days after completion of the aflatoxin test. Each USDA-approved aflatoxin testing laboratory shall complete section C of this report, and forward this report and the failing aflatoxin test results to the committee and to the handler within 10 days of the test failure.

* * * * *

§ 983.147 [Amended]

■ 20. Paragraph (d) of § 983.147 is suspended indefinitely.

Dated: December 4, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–5989 Filed 12–5–07; 10:02 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Erythromycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Cross Vetpharm Group Ltd. The supplemental NADA provides for use of a 100 milligram per milliliter (mg/mL) strength erythromycin injectable solution in cattle for the treatment of bovine respiratory disease.

DATES: This rule is effective December 7, 2007.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0169, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland, filed a supplement to NADA 12–123 for GALLIMYCIN–100 (erythromycin) Injection. The supplemental NADA provides for use of a 100 mg/mL strength erythromycin injectable solution in cattle for the treatment of bovine respiratory disease. The supplemental NADA is approved as of November 15, 2007, and the regulations in 21 CFR 522.820 are amended to reflect the approval and a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subject in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Revise § 522.820 to read as follows:

§ 522.820 Erythromycin.

(a) *Sponsor*. See No. 061623 in § 510.600(c) of this chapter.

(b) *Specifications*—(1) Each milliliter (mL) of solution contains 100 milligrams (mg) erythromycin base.

(2) Each mL of solution contains 200 mg erythromycin base.

(c) *Related tolerances*. See § 556.230 of this chapter.

(d) *Conditions of use*—(1) *Dog*. Administer product described in paragraph (b)(1) of this section as follows:

(i) *Amount*. 3 to 5 mg per pound (/lb) body weight, intramuscularly, two to three times daily, for up to 5 days.

(ii) *Indications for use*. For the treatment of bacterial pneumonia, upper respiratory infections (tonsillitis, bronchitis, tracheitis, pharyngitis, pleurisy), endometritis and metritis, and bacterial wound infections caused by *Staphylococcus* spp., *Streptococcus* spp., and *Corynebacterium* spp., sensitive to erythromycin.

(iii) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*. Administer product described in paragraph (b)(1) of this section as follows:

(i) *Amount*. 3 to 5 mg/lb body weight, intramuscularly, two to three times daily, for up to 5 days.

(ii) *Indications for use*. For the treatment of bacterial pneumonia, upper respiratory infections (rhinitis, bronchitis), secondary infections associated with panleukopenia, and bacterial wound infections caused by *Staphylococcus* spp. and *Streptococcus* spp., susceptible to erythromycin.

(iii) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) *Cattle*. Administer products described in paragraph (b) of this section as follows:

(i) *Amount*. 4 mg/lb body weight by deep intramuscular injection once daily for up to 5 days.

(ii) *Indications for use*. For the treatment of bovine respiratory disease (shipping fever complex and bacterial pneumonia) associated with *Pasteurella multocida* susceptible to erythromycin.

(iii) *Limitations*. Do not use in female dairy cattle over 20 months of age. Do not slaughter treated animals within 6 days of last treatment. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. To avoid excess trim, do not slaughter within 21 days of last injection.

Dated: November 30, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–23763 Filed 12–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

28 CFR Part 50

[Docket No. DEA–250F; A.G. Order No. 2920–2007]

Office of the Attorney General; Destruction of Contraband Drug Evidence

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule makes one revision to the Department of Justice regulations on the destruction of contraband drug evidence. The rule concerns the proper handling and disposal of liquid phencyclidine (PCP).

DATES: *Effective Date:* December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Wendy H. Goggin, Chief Counsel, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–1000.

SUPPLEMENTARY INFORMATION: This final rule implements one change to Title 28, Code of Federal Regulations (CFR), Part 50 and addresses the proper handling and disposal of liquid PCP, which is problematic because it is a controlled substance and acutely hazardous by nature. Liquid PCP contains piperidine, a flammable liquid that can be fatal if inhaled or ingested; sodium/potassium cyanide, which is highly poisonous and corrosive; and solvents, such as benzene, toluene and ethyl ether, which are toxic, flammable and possibly carcinogenic. These hazardous materials pose significant hazards to life and property because of their explosive, flammable, poisonous, and toxic characteristics. These risks can partially be mitigated by reducing the amount of liquid PCP that the Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI) are presently required to preserve.

A detailed explanation of this revision follows:

28 CFR 50.21

To address the proper handling and disposal of liquid PCP, this amendment implements a change to Title 28, CFR, Part 50, regarding the preservation of contraband drug evidence by DEA and the FBI, and will reduce the amount of liquid PCP the Government is required to preserve. Specifically, the amended regulation will reduce the amount of liquid PCP that Department of Justice (DOJ) law enforcement agencies (LEAs) are required to preserve from 200 grams of pure liquid PCP, or 2,000 grams of a liquid that contains a detectable amount of PCP, to 28.35 grams, or one (1) fluid ounce, of a liquid that contains PCP, in any form. Because the quantities currently required to be preserved jeopardize the safety of DOJ LEA personnel, reducing the preserved amount of liquid PCP to 28.35 grams will substantially reduce the risk to DOJ employees and facilities, and simultaneously ensure sufficient quantities for re-tests if the identity of a substance is disputed. Retention of a greater amount of PCP is unnecessary for due process in criminal cases. *See* 28 CFR 50.21(c); *see also United States* v. *Gibson,* 963 F.2d 708, 711 (5th Cir. 1992).

The preservation amounts for powdered PCP are unchanged.

Regulatory Certifications

Administrative Procedure Act

This rule relates to a matter of agency management or personnel and is a rule of agency organization, procedure, and practice. As such, this rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. *See* 5 U.S.C. 553(a)(2), (b)(3)(A), (d)(3).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis was not required to be prepared for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. This rule is limited to agency organization, management and personnel as described by Executive Order 12866 section 3(d)(3) and, therefore, is not a ''regulation'' or ''rule'' as defined by that Executive Order. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, Federalism, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a ''rule'' for purposes of the reporting requirement of 5 U.S.C. 801.

Congressional Review Act

The Department of Justice has determined that this action is a rule relating to agency organization, procedure or practice that does not substantially affect the rights or obligation of non-agency parties and, accordingly, it is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 50

Administrative practice and procedure.

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, Part 50 of Title 28 of the Code of Federal Regulations is amended as follows:

PART 50—STATEMENTS OF POLICY [AMENDED]

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 1921 *et seq.*, 1973c; and Pub. L. 107–273, 116 Stat. 1758, 1824.

■ 2. In § 50.21, paragraph (d)(4)(iv) is revised to read as follows:

§ 50.21 Procedures governing the destruction of contraband drug evidence in the custody of Federal law enforcement authorities.

* * * * *

(d) * * *

(4) * * *

(iv) Two hundred grams of powdered phencyclidine (PCP) or two kilograms of a powdered mixture or substance containing a detectable amount of phencyclidine (PCP) or 28.35 grams of a liquid containing a detectable amount of phencyclidine (PCP);

* * * * *

Dated: November 30, 2007.

Michael B. Mukasey,

Attorney General.

[FR Doc. E7–23792 Filed 12–6–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. CGD07–07–252]

RIN 1625–AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Mile 1134, Key Largo, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is temporarily changing the operating regulations governing the Jewfish Creek Bridge, Atlantic Intracoastal Waterway mile 1134, Key Largo, Monroe County, Florida. This rule will allow the Drawbridge to open on signal, except that from 7 a.m. until sunset this bridge will open on the hour and half-hour. This action is necessary for workers' safety.

DATES: This rule is effective 7 a.m. December 7, 2007 to April 30, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of the docket [Docket No. CGD07–07–252] and are available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, Florida 33131–3028 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Seventh Coast Guard District, Bridge Administration Branch, telephone number 305–415–6744.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NRPM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. An NPRM would be impracticable and contrary to the public interest as a delay in the effective date poses a risk to the construction workers and increases the risk of traffic accidents.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The bridge owner had informed the Coast Guard that there have been more vehicle accidents, resulting in an increased risk to workers during normal operation of this bridge then during the half-hour closure periods. Therefore, it is in the best interest of safety to implement this regulation as soon as possible.

Background and Purpose

The existing regulation of the draw requires that the Jewfish Creek Bridge, mile 1134 at Key Largo, shall open on signal; except that, from 10 a.m. to Sunset, Thursday through Sunday and Federal holidays, the draw need open only on the hour and half hour.

The owner of the bridge notified the Coast Guard that there is a noticeable difference in the vehicular delays and safety because of the vehicles backed up due to the on-demand openings. This has created additional accidents within the work zone and increases the potential of serious injuries to construction workers in the work zone. For these reasons the bridge owner has requested that the Coast Guard change the current operation of the Jewfish Creek Bridge. The drawbridge will be required to open twice an hour from 7 a.m. to sunset.

In cases of emergency, the drawbridge will be opened as soon as possible. This regulation is necessary for workers' safety.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although bridge openings will be restricted, vessel traffic will still be able to transit the Atlantic Intracoastal Waterway pursuant to the revised opening schedule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: The owners or operators of vessels needing to transit the Atlantic Intracoastal Waterway in the vicinity of the Jewfish Creek Bridge, persons intending to drive over the bridge, and nearby business owners. The revision to the openings schedule would not have a significant impact on a substantial number of small entities, although bridge openings will be restricted, vessel traffic will still be able to transit the Atlantic Intracoastal Waterway pursuant to the revised opening schedule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about the rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1

■ 2. From 7 a.m. on December 7, 2007, through sunset on April 30, 2008, § 117.261(qq) is suspended and § 117.261(uu) is added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway.

* * * * *

(uu) Jewfish Creek Bridge, mile 1134, Key Largo. The draw shall open on signal, except that from 7 a.m. to sunset, the bridge shall open on the hour and half-hour.

* * * * *

Dated: November 23, 2007.

William Lee,

Capt. USCG, District Commander, Seventh Coast Guard District, Acting.

[FR Doc. E7–23600 Filed 12–6–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1890–AA15

[Docket ID ED–2007–OCFO–0132]

Direct Grant Programs

AGENCY: Office of the Chief Financial Officer, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Department's regulations governing the determination and recovery of indirect costs by grantees. These amendments address procedural aspects related to the establishment of temporary indirect cost rates, specify the temporary rate that will apply to grants generally, and clarify how indirect costs are determined for a group of applicants that apply for a single training grant.

DATES: These regulations are effective January 7, 2008.

FOR FURTHER INFORMATION CONTACT: Richard Mueller, U.S. Department of Education, 830 First Street, NE., room

21C7, Washington, DC 20202–4450. Telephone: (202) 377–3838 or via the Internet: *Richard.Mueller@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On May 24, 2007, the Secretary published a notice of proposed rulemaking (NPRM) for these amendments in the **Federal Register** (72 FR 29097). In the preamble to the NPRM, the Secretary discussed on pages 29098 and 29099 the major changes proposed to the current regulations. These changes are summarized as follows:

- Amending § 75.560(c) and (d) to specify the procedures used to establish a temporary indirect cost rate for any grantee that does not have a federally recognized indirect cost rate.
- Amending § 75.562(c) to clarify that a grantee cannot include the amount of a sub-award [1] that exceeds $25,000 in the modified total direct cost base used to determine and charge its indirect cost rate.
- Amending § 75.564(e) to clarify the determination of indirect costs for a training grant in the context of a grant to a group of organizations that apply together for a grant under the procedures in §§ 75.127 through 75.129.

These final regulations provide a temporary indirect cost rate to a grantee that does not have a federally recognized indirect cost rate on the date the Department awards its first grant. The temporary rate for such a grantee will be 10 percent of the direct salaries and wages of the project. These regulations permit the use of a temporary indirect cost rate under the grant award for the first 90 days after the date the Department issues the Grant Award Notification. A grantee may continue to charge indirect costs at the temporary rate after the first 90 days if the grantee submits a formal indirect cost proposal to its cognizant agency within those 90 days. If, after the 90-day period, a grantee has not submitted an indirect cost proposal to its cognizant agency, it must stop using the temporary rate. After that period, the grantee will not be allowed to charge any indirect costs to its grant until it obtains a federally recognized indirect cost rate from its cognizant agency.

These regulations make the Department's practice consistent with the practice of other Federal agencies and reduce the number of improper payments that result when applicants budget indirect costs that are greater than the actual indirect costs the applicant can expect to recover under Federal cost principles. As explained in the NPRM, under the Department's prior practice, new grantees of the Department were not recovering any indirect costs until they negotiated an indirect cost rate with their cognizant agencies. These regulations now enable a new grantee to recover indirect costs at the temporary rate until it negotiates a rate with its cognizant agency or for 90 days if it does not submit its indirect cost rate proposal to its cognizant agency within the 90-day period.

The regulations also clarify how the modified total direct cost base is determined when a grant is subject to the eight percent indirect cost rate limitation for training grants and specify how to treat sub-awards (contracts) if the indirect cost rate is applied to a grant made to a group under the procedures in §§ 75.127 through 75.129.

Analysis of Comments and Changes

In the NPRM we invited comments on the proposed regulations. We did not receive any comments. There are no substantive differences between the NPRM and these final regulations. However, we have reviewed the regulations since publication of the NPRM and have made the following technical changes:

- We revised § 75.560(d)(3)(i) by deleting the words ''after the date the indirect cost proposal was submitted to the cognizant agency'' because this description of the period during which a grantee may recover costs at the negotiated rate is stated in paragraph (d)(3). The revised paragraph (d)(3)(i) simply states that the total amount of funds recovered by the grantee under the federally recognized indirect cost rate is reduced by the amount of indirect costs ''previously recovered under the temporary indirect cost rate.'' We believe these changes make the paragraph easier to understand.
- We added a note following § 75.562(c)(1) to clarify that, for any grantee that did not have a federally recognized indirect cost rate on the date its training grant was awarded, the indirect costs recovered under the training grant limitation in § 75.562(c)(1) are also subject to the limitations in § 75.560(d)(3).

Also, as a result of our internal review, we have concluded that changes similar to those reflected in these final regulations also should be made to 34 CFR part 76, which applies to State-administered programs of the Department. Therefore, soon we intend to propose changes to part 76 that are consistent with the changes in these regulations.

Transition Issues

Because the regulations authorizing a specified temporary indirect cost rate confer a benefit on new grantees, the Secretary has discretion to apply the regulations to grants made before the effective date of these regulations. Under the final regulations, a grantee must submit a formal indirect cost proposal to its cognizant agency within 90 days after the date the Department issues the Grant Award Notification (GAN). However, we are aware that some new grantees are currently in the first budget period of their grants and do not have Federally recognized indirect cost rates. These grantees would benefit from being able to use the temporary indirect cost rate as soon as these regulations become effective in 30 days. Accordingly, any grantee that was or is issued a GAN before these regulations become effective on January 7, 2008, is in the first budget period of its grant, and did not have a federally recognized indirect cost rate on the date the GAN was issued, may begin using the temporary indirect cost rate starting on the effective date of these regulations and will have until April 7, 2008 (90 days after the effective date of these final regulations) to submit a formal indirect cost proposal to its cognizant agency. If a grantee submits an indirect cost proposal within the 90 days after the regulations become effective, it may continue charging at the temporary rate until it obtains a federally recognized indirect cost rate. The Secretary takes this action so that new grantees may benefit from these amendments as soon as possible.

Finally, § 75.562(c)(2) requires grantees to exclude all contract costs in excess of $25,000 from the base used to calculate the total indirect cost recovery under a training grant. This exclusion will apply to the first training grant (new or continuation) made to a grantee after the date these regulations become effective.

Executive Order 12866

We have reviewed these final regulations in accordance with

[1] The term ''sub-award,'' as used in the final regulations, covers both subgrants and contracts made under a grant. However, as explained in the NPRM, because virtually all of the Department's discretionary grant programs do not authorize grantees to award subgrants, we describe the effect of the final regulations only on contracts awarded by grantees.

Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering the Department's Direct Grant programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

Summary of potential costs and benefits.

These regulations impose no additional burdens on applicants for discretionary grants or recipients of those grants. The regulations merely specify the rate at which grantees can recover indirect costs during a temporary period when the grantee does not have an indirect cost rate recognized by the Federal Government and establish procedural requirements regarding temporary indirect cost rates. While these final regulations prohibit a grantee from recovering indirect costs if the grantee has not submitted its indirect cost proposal within the 90 days after the date the Department issues the GAN, the burden and timing of submitting an indirect cost rate proposal under the procedures in the Federal cost principles do not change at all.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

These regulations affect Direct Grant programs of the Department that are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and to strengthen federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 75

Administrative practice and procedure, Education Department, Grant programs—education, Grant administration, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

Dated: December 4, 2007.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends part 75 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 2. Section 75.560 is amended by revising paragraphs (b) and (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 75.560 General indirect cost rates; exceptions.

* * * * *

(b) A grantee must have obtained a current indirect cost rate agreement from its cognizant agency, to charge indirect costs to a grant. To obtain an indirect cost rate, a grantee must submit an indirect cost proposal to its cognizant agency within 90 days after the date the Department issues the Grant Award Notification (GAN).

(c) If a grantee does not have a federally recognized indirect cost rate agreement, the Secretary may permit the grantee to charge its grant for indirect costs at a temporary rate of 10 percent of budgeted direct salaries and wages.

(d)(1) If a grantee fails to submit an indirect cost rate proposal to its cognizant agency within the required 90 days, the grantee may not charge indirect costs to its grant from the end of the 90-day period until it obtains a federally recognized indirect cost rate agreement applicable to the grant.

(2) If the Secretary determines that exceptional circumstances warrant continuation of a temporary indirect cost rate, the Secretary may authorize the grantee to continue charging indirect costs to its grant at the temporary rate specified in paragraph (c) of this section even though the grantee has not submitted its indirect cost rate proposal within the 90-day period.

(3) Once a grantee obtains a federally recognized indirect cost rate that is applicable to the affected grant, the grantee may use that indirect cost rate to claim indirect cost reimbursement for expenditures made on or after the date the grantee submitted its indirect cost proposal to its cognizant agency or the start of the project period, whichever is later. However, this authority is subject to the following limitations:

(i) The total amount of funds recovered by the grantee under the federally recognized indirect cost rate is reduced by the amount of indirect costs previously recovered under the temporary indirect cost rate.

(ii) The grantee must obtain prior approval from the Secretary to shift direct costs to indirect costs in order to recover indirect costs at a higher negotiated indirect cost rate.

(iii) The grantee may not request additional funds to recover indirect costs that it cannot recover by shifting direct costs to indirect costs.

* * * * *

■ 3. Section 75.562 is amended by revising paragraph (c) to read as follows:

§ 75.562 Indirect cost rates for educational training projects.

* * * * *

(c)(1) Indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less.

Note to paragraph (c)(1): If the grantee did not have a federally recognized indirect cost rate agreement on the date the training grant was awarded, indirect cost recovery is also limited to the amount authorized under § 75.560(d)(3).

(2) For the purposes of this section, a modified total direct cost base consists of total direct costs minus the following:

(i) The amount of each sub-award in excess of $25,000.

(ii) Stipends.

(iii) Tuition and related fees.

(iv) Equipment, as defined in 34 CFR 74.2 and 80.3, as applicable.

Note to paragraph (c)(2)(iv): If the grantee has established a threshold for equipment that is lower than $5,000 for other purposes, it must use that threshold to exclude equipment under the modified total direct cost base for the purposes of this section.

(3) The eight percent indirect cost reimbursement limit specified in paragraph (c)(1) of this section also applies to sub-awards that fund training, as determined by the Secretary under paragraph (b) of this section.

(4) The eight percent limit does not apply to agencies of State or local governments, including federally recognized Indian tribal governments, as defined in 34 CFR 80.3.

(5) Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

* * * * *

■ 4. Section 75.564 is amended by revising paragraph (e) to read as follows:

§ 75.564 Reimbursement of indirect costs.

* * * * *

(e)(1) Indirect costs for a group of eligible parties (See §§ 75.127 through 75.129) are limited to the amount derived by applying the rate of the applicant, or a restricted rate when applicable, to the direct cost base for the grant in keeping with the terms of the applicant's federally recognized indirect cost rate agreement.

(2) If a group of eligible parties applies for a training grant under the group application procedures in §§ 75.127 through 75.129, the grant funds allocated among the members of the group are not considered sub-awards for the purposes of applying the indirect cost rate in § 75.562(c).

* * * * *

[FR Doc. E7–23817 Filed 12–6–07; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–1059–200748a; FRL–8503–1]

Approval and Promulgation of Implementation Plans Georgia: Enhanced Inspection and Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Georgia State Implementation Plan (SIP), submitted by the Georgia Department of Natural Resources (GA DNR), through the Georgia Environmental Protection Division (GA EPD), on September 26, 2007. The revisions include modifications to Georgia's Air Quality Rules found at Chapter 391–3–20–.21, pertaining to rules for Enhanced Inspection and Maintenance (I/M). Enhanced I/M was required for 1-hour nonattainment areas classified as serious and above, under the Clean Air Act (CAA) as amended in 1990. The I/M program is a way to ensure that vehicles are maintained properly and verify that the emission control system is operating correctly, in order to reduce vehicle-related emissions. This action is being taken pursuant to section 110 of the CAA.

DATES: This direct final rule is effective February 5, 2008 without further notice, unless EPA receives adverse comment by January 7, 2008. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number, ''EPA–R04–OAR–2007–1059,'' by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: harder.stacy@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2007–1059,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Instructions: Direct your comments to Docket ID Number, ''EPA–R04–OAR–2007–1059.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. EPA's Action

EPA is approving a SIP revision submitted by the GA DNR, through GA EPD on September 26, 2007, pertaining to rules for I/M. The revisions include changes to Georgia's Air Quality Rules, found at Chapters 391–3–20–.21, subparagraphs (3)(a) through (d). These revisions became State effective on September 26, 2007.

II. Analysis of the State's Submittal

Rule 391–3–20–.21 ''Inspection Fees,'' is being revised, effective October 1, 2007, to reduce the administrative fee paid by the station owner to the GA DNR from $6.95 to $4.02 per pre-purchased Certificate of Emission Inspection. The fee for fleet inspection stations where GA EPD has required the installation and operation of a video camera surveillance system, is being reduced from $7.95 to $5.02. The reductions are based, in part, on lower contractual expenses effective October 1, 2007. This change will have a positive impact on small business owners that conduct vehicle inspections, by reducing their costs. There is no change in cost to the general public, as the inspection fee will remain the same. Additionally, this change has no effect on the emissions reductions claimed in the SIP.

III. Final Action

EPA is taking direct final action to approve the aforementioned revisions, specifically, Chapters 391–3–20–.21 subparagraphs (3)(a) through (d) into the Georgia SIP. These revisions were submitted by GA EPD on September 26, 2007.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 5, 2008 without further notice unless the Agency receives adverse comments by January 7, 2008.

If EPA receives such comments, EPA will then publish a document withdrawing the direct final rule and informing the public that such rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 5, 2008 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *February 5, 2008.* Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 28, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart L—Georgia

■ 2. Section 52.570(c) is amended by revising the entry for ''391–3–20'' to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
391–3–20	Enhanced Inspection and Maintenance	09/26/2007	12/07/2007 [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. E7–23710 Filed 12–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0766; FRL–8343–1]

RIN 2070–AJ28

Pesticide Tolerance Crop Grouping Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule makes revisions to the pesticide tolerance crop grouping regulations. Crop grouping allows tolerances to be established for multiple related crops based on data from a representative set of crops. The revisions will create a new crop group for edible fungi (mushrooms), expand existing crop groups by adding new commodities, establish new crop subgroups, and revise the representative crops in some groups. Additionally, EPA is revising the general crop group regulation to explain how the Agency will implement revisions to crop groups. EPA expects these revisions to promote greater use of crop groupings for tolerance-setting purposes and, in particular, assist in retaining or making pesticides available for minor crop uses. This is the first in a series of planned crop group updates expected during the next several years.

DATES: This final rule is effective on December 7, 2007.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0766. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rame Cromwell, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703-308-9068; fax number: 703-305-5884; e-mail address: *cromwell.rame@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer or food manufacturer. Potentially affected entities may include, but are not limited to:

- Crop Production (NAICS code 111).
- Animal Production (NAICS code 112).
- Food Manufacturing and Processing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Overview of this Document

A. What Action is the Agency Taking?

This final rule, under the provisions of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), amends

EPA's regulations governing crop group tolerances for pesticides. Specifically, the rule: (1) creates a new crop group for edible fungi (mushrooms); (2) expands existing crop groups by adding new commodities; (3) establishes new crop subgroups for two groups; (4) changes the representative crops for two groups; and (5) revises the general crop group regulation in 40 CFR 180.40 to explain how the Agency will implement revisions to crop groups.

The crop grouping concept leads to an estimate of the maximum residue level (MRL) that could occur on any crop within the group. The minimum data required for a group tolerance consists of residue data for all representative commodities for a group. This action is intended to promote more extensive use of crop group tolerances and, in particular, will assist in retaining or making pesticides available for minor crop uses.

This final rule is the first in a series of planned crop group updates expected to be promulgated in the next several years.

B. What is the Agency's Authority for this Action?

EPA is authorized to establish tolerances for pesticide chemical residues in food under FFDCA section 408. EPA establishes tolerances for each pesticide based on the potential risks to human health posed by that pesticide. A tolerance is the maximum permissible residue level established for a pesticide in raw agricultural produce and processed foods. The crop group regulations currently in 40 CFR 180.40 and 180.41 enable the establishment of tolerances for a group of crops based on residue data for certain crops that are representative of the group. Crop group regulations are promulgated under section 408(e)(1)(C) which authorizes EPA to establish ''general procedures and requirements to implement [section 408].'' 21 U.S.C. 346 a(e)(1)(C).

III. The Proposed Rule

EPA published a notice of proposed rulemaking in the **Federal Register** of May 23, 2007 (77 FR 28920). Written comments were solicited and were received from four parties in response to the proposal. Comments were received from a pesticide manufacturer, an association representing pesticide manufacturers, New Zealand Food Safety Authority, and the Interregional Research Project No. 4 (IR-4).

IV. The Final Rule

In response to comments, EPA is modifying some aspects of the rule relating to commodities identification, but is adopting most provisions without change. For the reasons discussed in Unit V, EPA is making the following modifications in the final rule: (1) Add the general statement ''will include cultivars, varieties, and/or hybrids of these'' to replace the extensive list of hybrids to the crop groups. (2) Add Kiwi, fuzzy (*Actinida chinensis*) to Crop Group 13-07: Berry and Small Fruit Group.

Otherwise, EPA is promulgating the rule as proposed.

Additionally, EPA is making one technical correction to the crop group regulation. The crop group regulation currently titles crop subgroups by giving them a number corresponding to the crop group number and also a letter to distinguish between subgroups. The number and letter are separated by a hyphen. For example, within the crop group for root and tuber vegetables (Crop Group 1), the root vegetables subgroup is designated as ''Crop Subgroup 1-A.'' Recent amendments to existing tolerances specified the number and letter of a subgroup without including a hyphen. Thus subgroup 1-A has been listed in the amended tolerances as 1A. To avoid correcting the recent amendments to hundreds if not thousands of tolerances, EPA is changing the crop group regulation to delete the hyphen in the designation of the crop subgroups number and letter. Thus, for example, in § 180.41(c)(1)(iii), ''subgroup 1-A'' will become ''subgroup 1A.'' Subgroups for amended crop groups will also drop the hyphen before the letter distinguishing the subgroup. Thus the bulb onion subgroup will be encoded as ''subgroup 3-07A'' not ''subgroup 3-07-A.'' EPA finds that there is good cause to make this change to the crop group regulation without prior notice and comment because this is a formatting change having no substantive or procedural effect, and thus notice and comment is unnecessary.

V. Response to Comments

In this section EPA describes the comments received on the proposed rule, and EPA's response to those comments, including EPA's determination of necessary modification of the proposed rule for this final rule.

A. General Procedures for Amending Pre-existing Crop Groups

EPA is adopting provisions of the proposed rule without changes.

The final rule specifies that, when a crop group is amended in a manner that expands or contracts its coverage of commodities, EPA will (1) retain the pre-existing crop group in 40 CFR 180.41; (2) insert the revised crop group immediately after the pre-existing group in the Code of Federal Regulations (CFR); and (3) title the revised crop group in a way that clearly differentiates it from the pre-existing crop group. The revised crop group will retain roughly the same name and number as the pre-existing group except that the number will be followed by a hyphen and the final 2 digits of the year it is established.

Over time, EPA expects that tolerances for pre-existing crop groups would be upgraded and would eventually be converted to tolerances for the more recent crop groups. (See Unit VI.) The adoption of a standardized format for titling amended crop groups is specifically designed to create a clear distinction between pre-existing and amended crop groups. These procedures are necessary because when EPA expands an existing crop group it is difficult to simultaneously amend the dozens of pesticide tolerances for that crop group already in force.

One commenter objected to this new scheme claiming it may result in confusion for growers and difficulties in harmonizing U.S. tolerances with international maximum residue levels for pesticides. The commenter suggested that if the change in the crop group is significant, a distinctive new name should be given the new crop group, but if the change involves adding only minor crops and no alteration of the representative commodities then ''no change in tolerance expression should be necessary when requesting label amendments adding the new minor crops.''

EPA understands that modifying existing crop groups could lead to confusion. For this reason it is adopting transparent procedures for how such modification will be published in the CFR and the titling procedure that will be used. Along these lines, an outreach effort to inform registrants, agriculture professionals, trade partners and others will be undertaken in support of these changes. EPA agrees with the commenter that if a crop group is changed in significant ways, a new descriptive name is appropriate. EPA has done just that with the berries crop group, changing the name to the berry and small fruit group to reflect the significant crops added to the group.

However, EPA disagrees with the assertion that no new crop group (and crop group name) is needed when only minor crops are added and the representative commodities remain the same. Unless EPA creates a new crop group when it expands the coverage of an existing group by adding new commodities, EPA will be expanding the scope of all then-current existing pesticide tolerances for that existing crop group. For example, the revisions to Crop Group 3 involve adding 19 additional commodities. If EPA did not establish a new crop group for this expanded set of commodities but instead just added these commodities to the existing crop group, the tolerance for the existing crop group already in the CFR would instantly expand to cover 19 additional commodities. This would be problematic because EPA would, in effect, be establishing new tolerances for the added commodities without following the statutory procedures for establishing a new tolerance or making the required safety findings. There is no provision in section 408 for waiving these procedural and substantive requirements for new tolerances.

B. Crop Group 3-07: Bulb Vegetable Group

EPA is adopting its proposal with one change, not to list specific hybrids. The final rule retains the pre-existing Crop Group 3 and titles the revised group as Crop Group 3-07.

1. *Add commodities*. The final rule revises Bulb Vegetable Group 3-07, expanding the existing seven commodities to 26 commodities.

2. *Change the names of representative commodities*. The final rule changes the name of the representative commodities for the new crop group by designating onion, bulb and onion, green as the representative commodities.

3. *Create crop subgroups*. The final rule retains the proposed addition of two subgroups to the revised crop group.

i. *Bulb onion subgroup 3-07A* . Representative crop. Onion, bulb. Eleven commodities are included in this subgroup.

ii. *Green onion subgroup 3-07B*. Representative crop. Onion, green. Fifteen commodities are included in this subgroup.

4. *Change of format*. The final rule converts the current narrative format of the existing group to tabular form.

5. *Change the name*. The final rule drops the descriptor ''(*Allium* spp.)'' from the name.

A commenter recommended that specific hybrids in the Bulb Vegetable Crop Group should not be listed. The commenter claimed that listing some hybrids and/or cultivars can cause confusion and uncertainty for growers of hybrids that are not listed.

EPA agrees with the commenter that extensive listings of hybrids are not necessary and could be confusing. Instead, the Agency is replacing the extensive lists of hybrids and cultivars with a general statement that will include cultivars, varieties, and/or hybrids of these commodities.

C. Crop Group 13-07: Berry and Small Fruit Group

EPA is adopting its proposal with an added commodity. The final rule revises and expands the berries crop group, but retains pre-existing Crop Group 13 and titles the revised group Crop Group 13-07.

1. *Add commodities*. Revised Crop Group 13-07 is expanded from the existing Crop Group 13 of 10 to 46 commodities.

2. *Change the crop group name*. The final rule changes the name of ''Crop Group 13: Berries Group'' to ''Crop Group 13-07: Berry and Small Fruit Group.''

3. *Revise the existing subgroups*. The final rule revises 13-07 to have subgroups, 13-07A and 13-07B. Subgroup13-07A is similar to existing 13A except that wild raspberry has been added. Subgroup 13-07B will have 13 additional commodities for a total of 19 commodities.

4. *Create new subgroups*. The final rule revises new crop group 13-07 to add six new subgroups.

i. *Large shrub berry subgroup 13-07C*. (Representative commodities. Elderberry or Mulberry). 13 commodities are included in this subgroup.

ii. *Small fruit vine climbing 13-07D*. (Representative commodities. Grape and Fuzzy kiwifruit). Seven commodities are included in this subgroup.

iii. *Small fruit vine climbing subgroup, except grape 13-07E*. (Representative commodity. Fuzzy kiwifruit). Six commodities are included in this subgroup.

iv. *Small fruit vine climbing subgroup except fuzzy kiwifruit, Grape 13-07F*. (Representative commodity. Grape). Six commodities are included in this subgroup.

v. *Low growing berry subgroup 13-07G*. (Representative commodity. Strawberry). Nine commodities are included in this subgroup.

vi. *Low growing berry subgroup, except strawberry 13-07H*. (Representative commodity. Cranberry). Eight commodities are included in this subgroup.

Several comments were received regarding the addition of kiwifruit to this crop group. One commenter requested that both ''Kiwifruit, hardy'' and ''Kiwifruit, fuzzy'' be removed from the crop group and a new group be created for inedible skinned tropical fruit. Another commenter asked that only ''Kiwifruit, fuzzy'' be deleted from the group. This commenter argued that fuzzy kiwifruit are different in size and in plant growth habits from other fruits in the group as well as being the only fruit in the group with inedible skin. The commenter further noted that any future inclusion of fuzzy kiwifruit in a crop group should recognize that there are currently two cultivars presently being grown commercially (*Acinidia deliciosa* and *Actinidia chinensis*). Finally, this commenter requested that hardy kiwifruit be renamed to clearly differentiate this commodity from the other more traditional kiwifruit (possibly by calling it ''Argot fruit'') and using the more generic name ''Kiwifruit'' (defined as *Actinidia deliciosa* or *Actinidia chinensis*) instead of the proposed name ''Kiwifruit, fuzzy'' (currently defined as only *Actinidia deliciosa*).

EPA believes that it is appropriate to keep both hardy and fuzzy kiwifruit as members of the berry and small fruit crop group. Kiwifruit is considered a trellis crop similar to grape culture, and its peel, while traditionally deemed inedible, is becoming increasingly popular to eat. Nonetheless, EPA will also consider adding the fuzzy kiwifruit to a tropical fruit crop group under development. Additionally, EPA agrees with the recommendation to amend the definition of fuzzy kiwifruit to include both its green (*Acinidia deliciosa*) and yellow (*Actinidia chinensis*) varieties. Both varieties are currently grown in the U.S., and although the yellow fleshed varieties have less surface hair on the fruit than the green varieties, both varieties are approximately the same size and are grown under the same conditions. Finally, EPA will retain the name ''Kiwifruit, hardy'' because it is a common commodity name in North America for the small, grape-like varieties of kiwifruit. It includes the Arguta species and the scientific name is *Actinidia arguta*.

One comment was received concerning adding Low growing berry subgroups to the berry and small fruit group. The commenter asserted that these subgroups contain diverse berries which vary significantly in harvest practices (e.g. strawberry vs. blueberry) as well as growth habit (e.g., blueberry vs. cranberry). The commenter stated that, although the approach of creating inclusive new crop groups is desirable, in these instances it may be unlikely that pest control solutions are likely to have similar directions for use (number of applications, pre-harvest interval, use rate, etc.), thus making the probability of having the same tolerance quite low. The commenter speculated that the likelihood of use of these subgroups may be low.

EPA disagrees that the commodities in these subgroups are too diverse. This subgroup was formed based on the commodities being either short shrubs or herbaceous perennials less than two feet in height. Most of these berries are from botanical families of *Ericaceae* and *Rosaceae* and have similar sized fruits (1/2 to 1/3 inches in length), except the strawberry, which is larger in size. Strawberry is selected as representative commodity for this subgroup (13-07G) of nine commodities based on its potential for higher residues related to the presence of seeds on its edible skin, higher per capita consumption, cultural practices, and larger commercial production and geographical locations. The blueberries in these subgroups are the lowbush types that are low growing (less than two feet) and similar to others in size in the subgroups. The highbush blueberry is in a separate crop subgroup (13-07B). The Agency is already receiving requests to utilize these subgroups for tolerance setting.

D. New Crop Group 21: Edible Fungi Group

EPA received no comments on the addition of this new group and adopts its proposed rule without change.

E. Technical Corrections

No comments were submitted on the proposed technical corrections section, and EPA adopts its proposed rule without change.

F. Other Comments

A commenter suggested significant changes to the preamble regarding the background of the rule.

These comments did not pertain to the substance of the rule. EPA will consider these comments in the development of preambles for future proposed rules on crop groups.

The Agency received a comment asking how the proposed changes will affect established product labels, including use directions for crops that are moved into new crop grouping arrangements.

There will be no EPA required changes to existing product labels. For product labels, crops are not automatically listed with the new crop group members. In addition, with respect to pre-existing tolerances, the existing crop groups will remain in place until a petition request is made to revise them or a chemical goes through the registration review process. At that time, and at the discretion of the registrant, labels would also have to be amended to reflect the changes to add the new crop group.

Another commenter asked how the proposed changes would affect residue programs of registrants and IR-4 that are now in progress and may have been initiated under soon-to-be-superseded crop groupings. The commenter asked whether such field residue programs can be completed under the existing crop groupings, and if adapting the programs to the new crop groups would delay submission of tolerance petitions.

The changes in the final rule will not impact on-going residue programs nor should it delay submissions of tolerance petitions. The changes being made do not require different field trial data for the representative commodities. In the case of Crop Group 3-07: Bulb Vegetable Group, the two representative commodities are still bulb onion and green onion. The rule will add subgroups and include additional crops. The field residue data requirements remain the same. Therefore, the only changes required for submission of the tolerance petitions will be administrative in that a new petition should reflect the new crop groups or subgroups. As stated in the proposed rule, once this rule is final, EPA will not establish new tolerances under the pre-existing groups.

The Agency received a comment on whether an administrative process could replace tolerance petitions to speed up and smooth the revision of existing tolerances affected by changes in crop groupings, especially since most of the additions of orphan/minor crops will not impact dietary risk assessment. The commenter suggested that there is a potential for unfair marketing advantage for new active ingredients versus currently registered active ingredients, if a tolerance petition is always required. It was proposed that IR-4 might play a facilitating role in administrative updates for all active ingredients affected by a particular crop grouping change.

In response, EPA would note that section 408 sets forth specific rule-making procedures for establishing and modifying tolerances. The process for taking advantage of the new group of edible fungi or expanded and updated groups of bulb vegetables and berries involves making a tolerance petition to EPA. The administrative and governing statutory requirements are analogous, whether the petition involves a single crop or one of the new or updated crop groups.

EPA received a comment that the conversion of existing crop group tolerances to the new crop group definitions could require petition action by a registrant and amendments to labels under the plan proposed by EPA (see Unit III. A. of the preamble of the proposed rule). The commenter stated that when a tolerance petition for one crop or group includes a request to amend a different tolerance solely to conform to a new crop group definition, the registration service fee under FIFRA section 33 should not be imposed or increased for that amendment action if it does not involve review of any data, or for subsequent conforming label amendments.

The fees for making label changes listed under PRIA are clearly defined. However, for this sort of change the registrant may request a discretionary refund for data that have already been reviewed. EPA will evaluate these requests as they are submitted, but it will not, at this time, make an across-the-board determination on PRIA fees. Further, registrants may choose not to make these changes when submitting a petition request for other crops. Because of the demonstrated advantages of the updated or new crop groups, EPA will eventually propose to convert existing crop groups on its own through mechanisms such as the registration review process.

Finally, EPA received a comment asking which crops from groups covered by crop group tolerances should be listed on the label in order to cover use of the pesticide on the entire group of all crops, selected crops, and representative crops only. EPA agrees that there are some coordination issues relative to labeling and tolerance expression and will address this question in other ways and through outreach activities.

VI. Implementation

After the effective date, when a crop group is amended in a manner that expands or contracts its coverage of commodities, EPA will (1) retain the pre-existing crop group in § 180.41; (2) insert the revised crop group immediately after the pre-existing crop group in the CFR; (3) title the revised crop group in a way that clearly differentiates it from the pre-existing crop group.

The revised crop group will retain roughly the same name and number as the pre-existing group except the number will be followed by a hyphen and the final digits of the year established. (e.g., Crop Group 3-07)

EPA will initially retain pre-existing crop groups that have been superseded by revised crop groups. EPA will not establish new tolerances under the pre-existing groups. Further, EPA plans to eventually convert tolerances for any pre-existing crop group to tolerances with coverage of the revised crop group.

This conversion will be effected both through the registration review process and in the course of preparing new risk assessments for a pesticide. EPA requests that petitioners for tolerances address this issue in their petitions.

For existing petitions for which a Notice of Filing has been published, the Agency will attempt to conform these petitions to this rule.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has designated this final rule as a not-significant regulatory action under section 3(f) of the Executive Order.

EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in ''Economic Analysis Final Expansion of Crop Grouping Program.'' A copy of the analysis is available in the docket and is briefly summarized here.

This is a burden-reducing regulation. Crop grouping has saved money by permitting the results of pesticide exposure studies for one crop to be applied to other, similar crops. The regulation exploits this opportunity for saving money by expanding certain crop groups and creating a new crop group for edible fungi.

The primary beneficiaries of the regulation are minor crop producers and consumers. Specialty crop producers will benefit because lower regulatory costs will encourage more products to be registered on minor crops, providing additional tools for pest control. Consumers will benefit by having a larger supply of imported and domestically produced specialty produce at potentially lower costs. Secondary beneficiaries are pesticide registrants, who benefit because expanded markets for pesticide products will lead to increased sales. The IR-4 Project and EPA, which are publicly funded Federal government entities, will also more efficiently use resources as a result of the rule. EPA will also benefit from broader operational efficiency gains, which result from fewer emergency pesticide use requests from specialty crop growers, the ability to conduct risk assessments based on crop grouping, greater ease of establishing import tolerances, greater capacity to assess risks of pesticides used on crops not grown in the US, further harmonization of crop classification and nomenclature, harmonized commodity import and export standards, and increased potential for resource sharing between EPA and other pesticide regulatory agencies. Revisions to the crop grouping program will result in no appreciable costs or negative impacts to consumers, specialty crop producers, pesticide registrants, the environment or human health.

No comments were received on the costs or burdens described in the Economic Analysis for the proposed rule.

B. Paperwork Reduction Act

This rule does not contain any new information collection requirements that would need approval by OMB under the provisions of the Paper Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* However, the rule is expected to reduce mandatory paperwork due to a reduction in required studies. The rule will have the effect of reducing the number of residue chemistry studies because fewer representative crops would need to be tested under a crop grouping scheme, than would otherwise be required.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule does not have any direct adverse impacts on small businesses, small non-profit organizations, or small local governments.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business according to the small business size standards established by the Small Business Administration (SBA); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the final rule on small entities'' (5 U.S.C. sections 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has positive economic effects on all of the small entities subject to the rule.

This rule provides regulatory relief and regulatory flexibility because the new or expanded crop groups ease the process for pesticide manufacturers to obtain pesticide tolerances on greater numbers of crops and make it likely that pesticides will be more widely available to growers for use on crops, particularly specialty crops.

D. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4), EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Accordingly, this rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

E. Executive Order 13132

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this rule does not have federalism implications, because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), EPA has determined that this rule does not have tribal implications because it will not have any affect on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) does not apply to this rule because this action is not designated as an economically significant regulatory action as defined by Executive Order 12866 (see Unit IV.A.), nor does it establish an environmental standard, or otherwise have a disproportionate effect on children.

H. Executive Order 13211

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not designated as an regulatory action as defined by Executive Order 12866 (see Unit IV.A.), nor is it likely to have any adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, and sampling procedures) that are developed or adopted by voluntary consensus standards bodies. This rule does not impose any technical standards that would require EPA to consider any voluntary consensus standards.

J. Executive Order 12898

Under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has not considered environmental justice-related issues because this rule does not have an adverse impact on the environmental and health conditions in low-income and minority communities.

The Agency hereby certifies that this rule will not have significant negative economic impact on a substantial number of small entities.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedures, pesticides and pests.

Dated: November 29, 2007.

James B. Gulliford,

Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, and 371

■ 2. Section 180.1 is amended by removing from the table in paragraph (g) the entries for ''Caneberries'', ''Onions'', ''Onions (dry bulb only)'', and ''Onions, green'' and by adding alphabetically new entries for ''Caneberry'', ''Onion'', ''Onion, bulb'', and ''Onion, green'', ''Garlic'' and ''Raspberry'' to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(g) * * *

A	B
	* * * * * * *
Caneberry	*Rubus* spp. (including blackberry; *Rubus caesius* (youngberry); *Rubus loganbaccus* (loganberry); *Rubus idaeus* (red and black raspberry); cultivars, varieties, and/or hybrids of these.
	* * * * * * *
Garlic	Garlic, great headed; garlic, and serpent garlic.
	* * * * * * *
Onion	Bulb onion; green onion; and garlic.
Onion, bulb	Bulb onion; garlic; great headed garlic; serpent garlic; Chinese onion; pearl onion; potato onion; and shallot, bulb.
Onion, green	Green onion; lady's leek; leek; wild leek; Beltsville bunching onion; fresh onion; tree onion, tops; Welsh onion; and shallot, fresh leaves.
	* * * * * * *
Raspberry	*Rubus* spp. (including bababerry; black raspberry; blackcap; caneberry; framboise; frambueso; himbeere; keriberry; mayberry; red raspberry; thimbleberry; tulameen; yellow raspberry; and cultivars, varieties, and/or hybrids of these).
	* * * * * * *

* * * * *

■ 3. Section 180.40 is amended by redesignating paragraph (j) as paragraph (k) and adding new paragraph (j) to read as follows:

§ 180.40 Tolerances for crop groups.

* * * * *

(j) When EPA amends a crop group in a manner that expands or contracts the commodities that are covered by the group, EPA will initially retain the pre-existing as well as the revised crop group in the CFR. The revised crop group will have the same number as the pre-existing crop group; however, the revised crop group number will be followed by a hyphen and the final two digits of the year in which it was established (e.g., if Crop Group 1 is amended in 2007, the revised group will be designated as Crop Group 1-07). If the pre-existing crop group had crop subgroups, these subgroups will be numbered in a similar fashion in the revised crop group. The name of the revised crop group will not be changed from the pre-existing crop group unless the revision so changes the composition of the crop group that the pre-existing name is no longer accurate. Once a revised crop group is established, EPA will no longer establish tolerances under the pre-existing crop group. At appropriate times, EPA will amend tolerances for crop groups that have been superseded by revised crop groups to conform the pre-existing crop group to the revised crop group. Once all of the tolerances for the pre-existing crop group have been updated, the pre-existing crop group will be removed from the CFR.

* * * * *

§ 180.41 [Amended]

■ 4. Section 180.41 is amended by removing the hyphens in the crop subgroup numbers listed in the tables in paragraphs (c)(1)(ii), (c)(1)(iii), (c)(4)(ii), (c)(4)(iii), (c)(5)(ii), (c)(5)(iii), (c)(6)(ii), (c)(6)(iii), (c)(7)(iii), (c)(9)(ii), (c)(9)(iii), (c)(13)(ii), (c)(13)(iii), (c)(19)(ii), and (c)(19)(iii).

■ 5. Section 180.41 is further amended by removing the commodities: cranberry, grape, kiwifruit, mushroom, and strawberry from paragraph (b); by revising paragraph (c)(3), by redesignating paragraphs (c)(4) through (c)(19) as paragraphs (c)(5) through (c)(20), respectively, and by adding a new paragraph (c)(4) to read as follows:

§ 180.41 Crop group tables.

* * * * *

(c) * * *

(3) *Crop Group 3*. Bulb Vegetables (*Allium* spp.) Group.

(i) *Representative commodities*. Onion, green; and onion, dry bulb.

(ii) *Commodities*. The following is a list of all the commodities in Crop Group 3.

CROP GROUP 3: BULB VEGETABLE (*Allium* SPP.) GROUP—COMMODITIES

Garlic, bulb (*Allium sativum*)
Garlic, great headed, (elephant) (*Allium ampeloprasum* var. *ampeloprasum*)
Leek (*Allium ampeloprasum*, *A. porrum, A. tricoccum*)
Onion, dry bulb and green (*Allium cepa, A. fistulosum*)
Onion, Welsh, (*Allium fistulosum*)
Shallot (*Allium cepa* var. *cepa*)

(4) *Crop Group 3-07*. Bulb Vegetable Group. (i) *Representative Commodities*. Onion, bulb and onion, green.

(ii) *Table*. The following Table 1 lists all the commodities listed in Crop Group 3-07 and identifies the related crop subgroups.

TABLE 1.—CROP GROUP 3-07: BULB VEGETABLE GROUP

Commodities	Related crop subgroups
Chive, fresh leaves (*Allium schoenoprasum L.*)	3-07B
Chive, Chinese, fresh leaves (*Allium tuberosum* Rottler ex Spreng)	3-07B
Daylily, bulb (*Hemerocallis fulva* (L.) L. var. *fulva*)	3-07A
Elegans hosta (*Hosta Sieboldiana (Hook.) Engl*)	3-07B
Fritillaria, bulb (*Fritillaria L. fritillary*)	3-07A
Fritillaria, leaves (*Fritillaria L. fritillary*)	3-07B
Garlic, bulb (*Allium sativum* L. var. *sativum*) (*A. sativum* Common Garlic Group)	3-07A
Garlic, great headed, bulb (*Allium ampeloprasum* L. var. *ampeloprasum*) (*A. ampeloprasum* Great Headed Garlic Group)	3-07A
Garlic, Serpent, bulb (*Allium sativum* var. *ophioscorodon* or *A. sativum* Ophioscorodon Group)	3-07A
Kurrat (*Allium kurrat Schweinf. Ex. K. Krause* or *A. ampeloprasum* Kurrat Group)	3-07B
Lady's leek (*Allium cernuum* Roth)	3-07B
Leek *Allium porrum* L. (syn: *A. ampeloprasum L.* var. *porrum* (L.) J. Gay) (*A.ampeloprasum* Leek Group)	3-07B
Leek, wild (*Allium tricoccum* Aiton)	3-07B
Lily, bulb (*Lilium* spp. (*Lilium Leichtlinii* var. *maximowiczii, Lilium lancifolium*))	3-07A
Onion, Beltsville bunching (*Allium* x *proliferum* (Moench) Schrad.) (syn: *Allium fistulosum* L. x *A. cepa* L.)	3-07B
Onion, bulb (*Allium cepa* L. var.*cepa*) (*A. cepa* Common Onion Group)	3-07A
Onion, Chinese, bulb (*Allium chinense* G. Don.) (syn: *A. bakeri* Regel)	3-07A
Onion, fresh (*Allium fistulosum* L. var. *caespitosum* Makino)	3-07B
Onion, green (*Allium cepa* L. var. *cepa*) (*A. cepa* Common Onion Group)	3-07B
Onion, macrostem (*Allium macrostemom* Bunge)	3-07B
Onion, pearl (*Allium porrum* var. *sectivum* or *A. ampeloprasum* Pearl Onion Group)	3-07A
Onion, potato, bulb (*Allium cepa* L. var. *aggregatum* G. Don.) (*A. cepa* Aggregatum Group)	3-07A
Onion, tree, tops (*Allium x proliferum* (Moench) Schrad. ex Willd.) (syn: *A. cepa* var. *proliferum* (Moench) Regel; *A. cepa* L. var. *bulbiferum* L.H. Bailey; *A. cepa* L. var. *viviparum* (Metz.) Alef.)	3-07B
Onion, Welsh, tops (*Allium fistulosum* L.)	3-07B
Shallot, bulb (*Allium cepa* var. *aggregatum* G. Don.)	3-07A
Shallot, fresh leaves (*Allium cepa* var. *aggregatum* G. Don.)	3-07B
Cultivars, varieties, and/or hybrids of these.	

(iii) *Table*. The following Table 2 identifies the crop subgroups for Crop Group 3-07, specifies the representative commodities for each subgroup and lists all the commodities included in each subgroup.

TABLE 2.—CROP GROUP 3-07: SUBGROUP LISTING

Representative commodities	Commodities
Crop subgroup 3-07A. Onion, bulb, subgroup. Onion, bulb.	Daylily, bulb; fritillaria, bulb; garlic, bulb; garlic, great-headed, bulb; garlic, serpent, bulb; lily, bulb; onion, bulb; onion, Chinese, bulb; onion, pearl; onion, potato, bulb; shallot, bulb; cultivars, varieties, and/or hybrids of these.
Crop subgroup 3-07B. Onion, green, subgroup. Onion, green.	Chive, fresh leaves; chive, Chinese, fresh leaves; elegans hosta; fritillaria, leaves; kurrat; lady's leek; leek; leek, wild; Onion, Beltsville bunching; onion, fresh; onion, green; onion, macrostem; onion, tree, tops; onion, Welsh, tops; shallot, fresh leaves; cultivars, varieties, and/or hybrids of these.

* * * * *

■ 6. Section 180.41 is further amended by redesignating newly designated paragraphs (c)(15) through (c)(20) as paragraphs (c)(16) through (c)(21), respectively, and by adding a new paragraph (c)(15) and paragraph (c)(22) to read as follows:

§ 180.41 Crop group tables.

* * * * *

(c) * * *

(15) *Crop Group 13-07*. Berry and Small Fruit Crop Group

(i) *Representative commodities*. Any one blackberry or any one raspberry; highbush blueberry; elderberry or mulberry; grape; fuzzy kiwifruit, and strawberry.

(ii) *Table*. The following Table 1 lists all the commodities listed in Crop Group 13-07 and identifies the related crop subgroups.

TABLE 1.—CROP GROUP 13-07: BERRY AND SMALL FRUIT CROP GROUP

Commodities	Related crop subgroups
Amur river grape (*Vitis amurensis Rupr*)	13-07D, 13-07E, 13-07F
Aronia berry (*Aronia* spp.)	13-07B
Bayberry (*Myrica* spp.)	13-07C
Bearberry (*Arctostaphylos uva-ursi*)	13-07G, 13-07H
Bilberry (*Vaccinium myrtillus L.)*	13-07G, 13-07H
Blackberry (*Rubus* spp.) (including Andean blackberry, arctic blackberry, bingleberry, black satin berry, boysenberry, brombeere, California blackberry, Chesterberry, Cherokee blackberry, Cheyenne blackberry, common blackberry, coryberry, darrowberry, dewberry, Dirksen thornless berry, evergreen blackberry, Himalayaberry, hullberry, lavacaberry, loganberry, lowberry, Lucretiaberry, mammoth blackberry, marionberry, mora, mures deronce, nectarberry, Northern dewberry, olallieberry, Oregon evergreen berry, phenomenalberry, rangeberry, ravenberry, rossberry, Shawnee blackberry, Southern dewberry, tayberry, youngberry, zarzamora, and cultivars, varieties and/or hybrids of these.	13-07A
Blueberry, highbush (*Vaccinium* spp.)	13-07B
Blueberry, lowbush (*Vaccinium angustifolium* Aiton)	13-07B
Buffalo currant (*Ribes aureum* Pursh)	13-07B
Buffaloberry (*Shepherdia argentea* (Pursh) Nutt.)	13-07C
Che (*Cudrania tricuspidata* Bur. Ex Lavallee)	13-07C
Chilean guava (*Myrtus ugni* Mol.)	13-07B
Chokecherry (*Prunus virginiana* L.)	13-07C
Cloudberry (*Rubus chamaemorus* L.)	13-07G, 13-07H
Cranberry (*Vaccinium macrocarpon* Aiton)	13-07G, 13-07H
Currant, black (*Ribes nigrum* L.)	13-07B
Currant, red (*Ribes rubrum* L.)	13-07B
Elderberry (*Sambucus* spp.)	13-07B, 13-07C
European barberry (*Berberis vulgaris* L.)	13-07B
Gooseberry (*Ribes* spp.)	13-07B, 13-07D
Grape (Vitis spp.)	13-07D, 13-07F
Highbush cranberry (*Viburnum opulus* L. var. *Americanum* Aiton)	13-07B
Honeysuckle, edible (*Lonicera caerula L.* var. *emphyllocalyx* Nakai, *Lonicera caerula L* var *. edulis Turcz. ex herder*)	13-07B
Huckleberry (*Gaylussacia* spp.)	13-07B
Jostaberry (*Ribes x nidigrolaria* Rud. Bauer and A. Bauer)	13-07B
Juneberry (Saskatoon berry) (*Amelanchier* spp.)	13-07B, 13-07C
Kiwifruit, fuzzy (*Actinidia deliciosa* A. Chev.) (C.F. Liang and A.R. Fergusons, *Actinida chinensis* Planch.)	13-07D, 13-07E
Kiwifruit, hardy (*Actinidia arguta* (Siebold and Zucc.) Planch. ex Miq)	13-07D, 13-07E, 13-07F
Lingonberry (*Vaccinium vitis-idaea* L.)	13-07B, 13-07G 13-07H
Maypop (*Passiflora incarnata* L.)	13-07E, 13-07F
Mountain pepper berries (*Tasmannia lanceolata*)(Poir.) A.C.Sm.	13-07C
Mulberry (*Morus* spp.)	13-07C
Muntries (*Kunzea pomifera* F. Muell.)	13-07G, 13-07H
Native currant (*Acrotriche depressa* R. BR.)	13-07B
Partridgeberry (*Mitchella repens* L.)	13-07G, 13-07H
Phalsa (*Grewia subinaequalis* DC.)	13-07C
Pincherry (*Prunus pensylvanica* L.f.)	13-07C
Raspberry, black and red (*Rubus* spp.)	13-07A
Riberry (*Syzygium luehmannii*)	13-07C
Salal (*Gaultheria shallon* Pursh.)	13-07B, 13-07C
Schisandra berry (Schisandra chinensis (Turcz.) Baill.)	13-07D, 13-07E, 13-07F
Sea buckthorn (*Hippophae rhamnoides* L.)	13-07B
Serviceberry (*Sorbus* spp.)	13-07C
Strawberry (*Fragaria x ananassa* Duchesne)	13-07G
Wild raspberry (*Rubus muelleri* Lefevre ex P.J. Mull)	13-07A
Cultivars, varieties, and/or hybrids of these.	

(iii) *Table*. The following Table 2 identifies the crop subgroups for Crop Group 13-07, specifies the representative commodities for each subgroup and lists all the commodities included in each subgroup.

TABLE 2.—CROP GROUP 13-07: SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 13-07A. Caneberry subgroup	
Any one blackberry or any one raspberry.	Blackberry; loganberry; raspberry, red and black; wild raspberry; cultivars, varieties, and/or hybrids of these.
Crop Subgroup 13-07B. Bushberry subgroup.	
Blueberry, highbush.	Aronia berry; blueberry, highbush; blueberry, lowbush; buffalo currant; Chilean guava; currant, black; currant, red; elderberry; European, barberry; gooseberry; cranberry, highbush; honeysuckle, edible; huckleberry; jostaberry; Juneberry; lingonberry; native currant; salal; sea buckthorn; cultivars, varieties, and/or hybrids of these.
Crop Subgroup 13-07C. Large shrub/tree berry subgroup.	
Elderberry or mulberry.	Bayberry; buffaloberry; che; chokecherry; elderberry; Juneberry; mountain pepper berries; mulberry; phalsa; pincherry; riberry; salal; serviceberry; cultivars, varieties, and/or hybrids of these.
Crop Subgroup 13-07D. Small fruit vine climbing subgroup.	
Grape and fuzzy kiwifruit.	Amur river grape; gooseberry; grape; kiwifruit, fuzzy; kiwifruit, hardy; Maypop; schisandra berry; cultivars, varieties, and /or hybrids of these.
Crop Subgroup 13-07E. Small fruit vine climbing subgroup, except grape.	
Fuzzy kiwifruit.	Amur river grape; gooseberry; kiwifruit, fuzzy; kiwifruit, hardy; Maypop; schisandra berry; cultivars, varieties, and/or hybrids of these.
Crop Subgroup 13-07F. Small fruit vine climbing subgroup except fuzzy kiwifruit.	
Grape.	Amur river grape; gooseberry; grape; kiwifruit, hardy; Maypop; schisandra berry; cultivars varieties, and/or hybrids of these.
Crop Subgroup 13-07G. Low growing berry subgroup.	
Strawberry.	Bearberry; bilberry; blueberry, lowbush; cloudberry; cranberry; lingonberry; muntries; partridgeberry; strawberry; cultivars, varieties, and/or hybrids of these.
Crop Subgroup 13-07H. Low growing berry subgroup, except strawberry.	
Cranberry	Bearberry; bilberry; blueberry, lowbush; cloudberry; cranberry; lingonberry; muntries; partridgeberry; cultivars, varieties, and/or cultivars of these.

* * * * *

(22) *Crop Group 21*. Edible fungi Group.

(i) *Representative commodities*. White button mushroom and any one oyster mushroom or any Shiitake mushroom.

(ii) *Table*. The following is a list of all the commodities in Crop Group 21. There are no related subgroups.

CROP GROUP 21: EDIBLE FUNGI GROUP—COMMODITIES

Blewitt, Lepista nuda (*Tricholomataceae*)
Bunashimeji, Hypsizygus marrmoreus (*Agaricaceae*)
Chinese mushroom, Volvariella volvacea (Bull.) Singer (*Pluteaceae*)
Enoki, Flammulina velutipes (Curt.) Singer (*Tricholomataceae*)
Hime-Matsutake, Agaricus blazei Murill (*Agaricaceae*)
Hirmeola, Auricularia *auricular* (*Auricularicaceae*)
Maitake, Grifola frondosa (*Polyporaceae*)
Morel, Morchella spp. (*Morchellaceae*)
Nameko, Pholiota nameko, (*Strophariaceae*)
Net Bearing Dictyophora, Dictyophora indusiata (*Phallaceae*)
Oyster mushroom, Pleurotus spp. (*Tricholomataceae*)
Pom Pom, Hericium erinaceus (*Hydnaceae*)
Reishi mushroom, Ganoderma lucidum (Leyss. Fr.) Karst. (*Ganodermataceae*)
Rodman's agaricus, Agaricus bitorquis (Quel.) Saccardo (*Agaricaceae*)
Shiitake mushroom, Lentinula edodes (Berk.) Pegl. (*Polyporaceae*)
Shimeji, Tricholoma conglobatum, (*Tricholomataceae*)
Stropharia, Stropharia spp. (*Strophariaceae*)
Truffle, Tuber spp. (*Tuberaceae*)
White button mushroom, Agaricus bisporous (Lange) Imbach (*Agaricaceae*)
White Jelly Fungi, Tremella fuciformis (*Tremellaceae*)

[FR Doc. E7–23659 Filed 12–6–07; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 216

Defense Federal Acquisition Regulation Supplement; Technical Amendment

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making a technical amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) to update a cross-reference within the DFARS text.

DATES: *Effective Date:* December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0311; facsimile 703–602–7887.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS 216.603–4 to update a cross-reference.

List of Subjects in 48 CFR Part 216

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 216 is amended as follows:

PART 216—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 216 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

216.603–4 [Amended]

■ 2. Section 216.603–4 is amended in paragraph (b)(3) by removing ''217.7406'' and adding in its place ''217.7405''.

[FR Doc. E7–23658 Filed 12–6–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 227 and 252

RIN 0750–AD72

Defense Federal Acquisition Regulation Supplement; Patent Rights-Ownership by the Contractor (DFARS Case 2001–D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add a clause pertaining to patent rights under contracts awarded to large business concerns for experimental, developmental, or research work. The clause is substantially the same as a Federal Acquisition Regulation (FAR) clause that has been removed because DoD was the only agency using the clause.

DATES: *Effective Date:* December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0328; facsimile 703–602–7887. Please cite DFARS Case 2001–D015.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule adds a clause at DFARS 252.227–7038, Patent Rights-Ownership by the Contractor (Large Business). The DFARS clause is similar to the clause previously found at FAR 52.227–12, Patent Rights-Retention by the Contractor (Long Form). The FAR clause was removed by the final rule published at 72 FR 63045 on November 7, 2007, because DoD was the only agency using the clause. The new DFARS clause also contains changes for consistency with current statutory provisions and with other changes made to the FAR in the final rule published on November 7, 2007. The clause is prescribed for use in contracts awarded to large business concerns for experimental, developmental, or research work.

DoD published a proposed rule at 69 FR 58377 on September 30, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule, with a minor change resulting from the final FAR rule published on November 7, 2007, removal of the clause at DFARS 252.227–7034, Patents-Subcontracts. The clause at DFARS 252.227–7034 was used in contracts containing the clause at FAR 52.227–11, Patent Rights-Retention by the Contractor (Short Form), to require inclusion of the clause at FAR 52.227–12, Patent Rights-Retention by the Contractor (Long Form), in subcontracts for experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization. Since the clause at FAR 52.227–12 has been removed, and paragraph (k) of the clause at FAR 52.227–11, as revised at 72 FR 63045 on November 7, 2007, adequately addresses subcontract requirements, the clause at DFARS 252.227–7034 is no longer necessary and is removed.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the new DFARS clause applies only to contracts with large business concerns and is substantially the same as a FAR clause that is already being used in DoD contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies. The information collection requirements in this rule are presently approved under Office of Management and Budget Control Number 9000–0095, applicable to FAR Subpart 27.3. These hours will be transferred to OMB Control Number 0704–0369, applicable to DFARS Part 227.

List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 227 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 227 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 227—PATENTS, DATA, AND COPYRIGHTS

■ 2. Section 227.303 is revised to read as follows:

227.303 Contract clauses.

(1) Use the clause at 252.227–7039, Patents—Reporting of Subject Inventions, in solicitations and contracts containing the clause at FAR 52.227–11, Patent Rights—Ownership by the Contractor.

(2)(i) Use the clause at 252.227–7038, Patent Rights—Ownership by the Contractor (Large Business), instead of the clause at FAR 52.227–11, in solicitations and contracts for experimental, developmental, or research work if—

(A) The contractor is other than a small business concern or nonprofit organization; and

(B) No alternative patent rights clause is used in accordance with FAR 27.303(c) or (e).

(ii) Use the clause with its Alternate I if—

(A) The acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement;

(B) The agency head determines at the time of award that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement; or

(C) Other rights are necessary to effect a treaty or agreement, in which case Alternate I may be appropriately modified.

(iii) Use the clause with its Alternate II in long-term contracts if necessary to effect treaty or agreements to be entered into.

227.304–4 [Removed]

■ 3. Section 227.304–4 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.227–7034 [Removed]

■ 4. Section 252.227–7034 is removed and reserved.

■ 5. Section 252.227–7038 is added to read as follows:

252.227–7038 Patent Rights—Ownership by the Contractor (Large Business).

As prescribed in 227.303(2), use the following clause:

PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (DEC 2007)

(a) *Definitions.* As used in this clause—

Invention means—

(1) Any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code; or

(2) Any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Made—

(1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, means that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

Nonprofit organization means—

(1) A university or other institution of higher education;

(2) An organization of the type described in the Internal Revenue Code at 26 U.S.C. 501(c)(3) and exempt from taxation under 26 U.S.C. 501(a); or

(3) Any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application means—

(1)(i) To manufacture, in the case of a composition or product;

(ii) To practice, in the case of a process or method; or

(iii) To operate, in the case of a machine or system; and

(2) In each case, under such conditions as to establish that—

(i) The invention is being utilized; and

(ii) The benefits of the invention are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention means any invention of the Contractor made in the performance of work under this contract.

(b) *Contractor's rights*—(1) *Ownership.* The Contractor may elect to retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.

(2) *License.* (i) The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license-

(A) Extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part;

(B) Includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at the time of contract award; and

(C) Is transferable only with the approval of the agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(ii) The agency—

(A) May revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404 and agency licensing regulations;

(B) Will not revoke the license in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public; and

(C) May revoke or modify the license in any foreign country to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(iii) Before revoking or modifying the license, the agency—

(A) Will furnish the Contractor a written notice of its intention to revoke or modify the license; and

(B) Will allow the Contractor 30 days (or such other time as the funding agency may authorize for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified.

(iv) The Contractor has the right to appeal, in accordance with 37 CFR part 404 and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(c) *Contractor's obligations.* (1) The Contractor shall—

(i) Disclose, in writing, each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters, or within 6 months after the Contractor first becomes aware that a subject invention has been made, whichever is earlier;

(ii) Include in the disclosure—

(A) The inventor(s) and the contract under which the invention was made;

(B) Sufficient technical detail to convey a clear understanding of the invention; and

(C) Any publication, on sale (i.e., sale or offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication; and

(iii) After submission of the disclosure, promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication and of any on sale or public use.

(2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Contractor will retain ownership. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the agency may shorten the period of election of title to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall—

(i) File either a provisional or a nonprovisional patent application on an elected subject invention within 1 year after election, provided that in all cases the application is filed prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use;

(ii) File a nonprovisional application within 10 months of the filing of any provisional application; and

(iii) File patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date the Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (2), and (3) of this clause. The Contracting Officer will normally grant the extension unless there is reason to believe the extension would prejudice the Government's interests.

(d) *Government's rights*— (1) *Ownership.* The Contractor shall assign to the agency, upon written request, title to any subject invention—

(i) If the Contractor elects not to retain title to a subject invention;

(ii) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) of this clause and the agency requests title within 60 days after learning of the Contractor's failure to report or elect within the specified times;

(iii) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause, provided that, if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Contractor shall continue to retain ownership in that country; and

(iv) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(2) *License.* If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, the subject invention throughout the world.

(e) *Contractor action to protect the Government's interest.* (1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d)(1) of this clause and enable the Government to obtain patent protection for that subject invention in any country.

(2) The Contractor shall—

(i) Require, by written agreement, its employees, other than clerical and nontechnical employees, to—

(A) Disclose each subject invention promptly in writing to personnel identified as responsible for the administration of patent matters, so that the Contractor can comply with the disclosure provisions in paragraph (c) of this clause; and

(B) Provide the disclosure in the Contractor's format, which should require, as a minimum, the information required by paragraph (c)(1) of this clause;

(ii) Instruct its employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or statutory foreign bars; and

(iii) Execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(3) The Contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The Contractor shall include, within the specification of any United States nonprovisional patent application and any patent issuing thereon covering a subject invention, the following statement: ''This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in this invention.''

(5) The Contractor shall—

(i) Establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters;

(ii) Include in these procedures the maintenance of—

(A) Laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions; and

(B) Records that show that the procedures for identifying and disclosing the inventions are followed; and

(iii) Upon request, furnish the Contracting Officer a description of these procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor shall, when licensing a subject invention, arrange to—

(i) Avoid royalty charges on acquisitions involving Government funds, including funds derived through the Government's Military Assistance Program or otherwise derived through the Government;

(ii) Refund any amounts received as royalty charges on the subject inventions in acquisitions for, or on behalf of, the Government; and

(iii) Provide for the refund in any instrument transferring rights in the invention to any party.

(7) The Contractor shall furnish to the Contracting Officer the following:

(i) Interim reports every 12 months (or any longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no subject inventions.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no subject inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no subcontracts.

(8)(i) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying—

(A) The subcontractor;

(B) The applicable patent rights clause;

(C) The work to be performed under the subcontract; and

(D) The dates of award and estimated completion.

(ii) The Contractor shall furnish, upon request, a copy of the subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses specified in paragraph (l)(1) of this clause, the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for the refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with that subcontract without the written authorization of the Contracting Officer.

(10) The Contractor shall provide to the Contracting Officer, upon request, the following information for any subject invention for which the Contractor has retained ownership:

(i) Filing date.

(ii) Serial number and title.

(iii) A copy of any patent application (including an English-language version if filed in a language other than English).

(iv) Patent number and issue date.

(11) The Contractor shall furnish to the Government, upon request, an irrevocable power to inspect and make copies of any patent application file.

(f) *Reporting on utilization of subject inventions.* (1) The Contractor shall—

(i) Submit upon request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts in obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees;

(ii) Include in the reports information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other information as the agency may reasonably specify; and

(iii) Provide additional reports that the agency may request in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (h) of this clause.

(2) To the extent permitted by law, the agency shall not disclose the information provided under paragraph (f)(1) of this clause to persons outside the Government without the Contractor's permission, if the data or information is considered by the Contractor or its licensee or assignee to be ''privileged and confidential'' (see 5 U.S.C. 552(b)(4)) and is so marked.

(g) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the agency may waive the requirement for an exclusive license agreement upon a showing by the Contractor or its assignee that—

(1) Reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States; or

(2) Under the circumstances, domestic manufacture is not commercially feasible.

(h) *March-in rights.* The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), 37 CFR 401.6, and any supplemental regulations of the agency in effect on the date of contract award.

(i) *Other inventions.* Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(j) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any inventions are subject inventions;

(ii) The Contractor has established procedures required by paragraph (e)(5) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor shall be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph (j) shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(k) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of the contract, whichever is less, is set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(5) of this clause;

(ii) Disclose any subject invention pursuant to paragraph (c)(1) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(7)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (e)(8) of this clause.

(2) The reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) The Government will not make final payment under this contract before the Contractor delivers to the Contracting Officer—

(i) All disclosures of subject inventions required by paragraph (c)(1) of this clause;

(ii) An acceptable final report pursuant to paragraph (e)(7)(ii) of this clause; and

(iii) All past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized in paragraph (k)(1) of this clause. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(l) *Subcontracts.* (1) The Contractor—

(i) Shall include the substance of the Patent Rights-Ownership by the Contractor clause set forth at 52.227–11 of the Federal Acquisition Regulation (FAR), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization; and

(ii) Shall include the substance of this clause, including this paragraph (l), in all other subcontracts for experimental, developmental, or research work, unless a different patent rights clause is required by FAR 27.303.

(2) For subcontracts at any tier—

(i) The patents rights clause included in the subcontract shall retain all references to the Government and shall provide to the subcontractor all the rights and obligations provided to the Contractor in the clause. The Contractor shall not, as consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions; and

(ii) The Government, the Contractor, and the subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Government with respect to those matters covered by this clause. However, nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (h) of this clause.

(End of clause)

Alternate I (DEC 2007).

As prescribed in 227.303(2)(ii), add the following paragraph (b)(2)(v) to the basic clause:

(v) The license shall include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: ________________*.

[Contracting Officer to complete with the names of applicable existing treaties or international agreements. This paragraph is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]*

Alternate II (DEC 2007).

As prescribed in 227.303(2)(iii), add the following paragraph (b)(2)(v) to the basic clause:

(v) The agency reserves the right to—

(A) Unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract; and

(B) Exercise those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under any treaties or international agreement with respect to subject inventions made after the date of the amendment.

■ 6. Section 252.227–7039 is amended by revising the introductory text to read as follows:

§ 252.227–7039 Patents—Reporting of Subject Inventions.

As prescribed in 227.303(1), use the following clause:

* * * * *

[FR Doc. E7–23655 Filed 12–6–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 070703215–7530–02]

RIN 0648–AU08

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Vessel Monitoring System; Open Access Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to require all vessels fishing pursuant to the harvest guidelines, quotas, and other management measures governing the open access groundfish fishery, and all trawl vessels to provide declaration reports and to activate and use a vessel monitoring system (VMS) transceiver while fishing off the coasts of Washington, Oregon and California. NMFS has implemented a series of large-scale geographically-defined closed areas intended to: minimize the bycatch of overfished groundfish species, minimize the bycatch of protected salmon species, and protect Essential Fish Habitat (EFH) from harm through contact with fishing gear. This action is intended to improve the monitoring of compliance with those closed areas through regular VMS transmissions of vessel locations for those vessels subject to groundfish closed area restrictions.

DATES: Effective February 4, 2008.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), Finding of No Significant Impact (FONSI), Final Regulatory Flexibility Analysis (FRFA), and the Small Entity Compliance Guide are available from D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, phone: 206–526–6150.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, and by e-mail to *DavidRostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Becky Renko (Northwest Region, NMFS), phone: 206–526–6110; fax: 206–526–6736 and; e-mail: *becky.renko@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the **Federal Register**'s Web site at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov* and at the Pacific Fishery Management Council's (Council) Web site at *http://www.pcouncil.org*.

Background

On August 8, 2007, NMFS published a proposed rule to implement a VMS program for the West Coast groundfish open access fisheries (72 FR 44469,) requesting public comments through September 7, 2007. During the comment period, NMFS received eight emails of comment, which are addressed later in the preamble to this final rule. See the preamble to the proposed rule for additional background information on the VMS program and the open access fishery.

A VMS transceiver is an electronic device that is installed on a vessel to monitor the vessel's position in relation to geographically defined areas. The Council has determined that implementation of VMS requirements is necessary to monitor and enforce the extensive system of depth- and habitat-based closed areas employed in West coast groundfish management. This final rule requires all open access vessels to have a type-approved VMS transceiver unit that is properly activated and used from the time a vessel leaves port on a trip in which: groundfish is taken and retained in the EEZ; groundfish is possessed while operating in the EEZ (including transiting); or groundfish taken in the EEZ is landed. In addition, this final rule requires any vessel fishing in the EEZ with non-groundfish trawl gear to have a type-approved VMS transceiver unit properly installed and activated prior to leaving port. Once the VMS unit is activated, it must remain on throughout the remainder of the fishing year, unless such vessel is granted an exemption to the requirements for continuous operation. This final rule supplements the VMS program implemented on January 1, 2004, for the limited entry groundfish fisheries (November 4, 2003; 68 FR 62374).

Comments and Responses

During the comment period for the proposed rule for this action, NMFS received eight comments by email, which are addressed here:

Comment 1: One commenter supports the proposed requirements that all vessels fishing for groundfish carry a VMS transceiver unit to enhance the ability to enforce depth-based management measures.

Response: NMFS agrees that the proposed VMS requirements for the open access fisheries will allow enforcement resources to be used more efficiently and effectively to ensure the integrity of management areas that were implemented to restrict fishing mortality on overfished species and to protect EFH.

Comment 2: The current list of type-approved VMS transceiver units for the Pacific Coast Groundfish fishery includes basic units that are only capable of one-way communications. These basic VMS transceiver units are small and capable of transmitting a vessel's position without requiring additional on-board computer support. Two commenters expressed concern that the basic VMS transceiver units will be removed from the list of type-approved VMS units and not available for use in the OA fishery. The commenters believe that the majority of the OA fleet would choose to purchase the basic units. If the basic VMS transceiver units are not available to open access fishers, the commentors are concerned that many of the smallest OA vessels (many vessels are less than 26 feet (8 meters) in length), with minimal electronic support, would be unable to comply with the requirements and would need to leave the fishery.

Response: To assure compatibility with the national monitoring center, NMFS requires that VMS systems meet defined standards (58 FR 49285, September 23, 1993; March 31, 1994, 59 FR 15180; October 27, 2005, 70 FR 61941; and 72 FR 60826, October 6, 2007), while recognizing the need to promulgate regulations and approve systems on a fishery-by-fishery basis. VMS transceiver units approved for use by NMFS are referred to as type-approved. On November 17, 2003 (68 FR 64860), NMFS published a notice identifying VMS transceiver units and communication service providers that are type-approved for the Pacific Coast groundfish fishery.

The commenters are correct that the current list of VMS units type-approved for use in the Pacific Coast groundfish fishery includes small VMS transceiver units that are only capable of one way communications. At this time, NMFS Office for Law Enforcement is considering revising the list of type-approved units to include only units capable of two-way communications. The reason for considering such a revision is that the VMS transceiver units are valuable tools that can also be used to transmit other necessary fisheries management data to and from the vessels. There are VMS transceiver units that are capable of two-way communications that are similar in size and cost to the one-way units that are currently type-approved for the Pacific coast groundfish fishery.

Comment 3: One commenter suggested that minimum performance parameters need to be specified for VMS transceiver units, rather than type-approving specific units. The minimum performance parameters should require VMS transceiver units to be capable of supporting text messaging and email so the system is capable of transmitting other types of data such as vessel logbooks and observer data.

Response: NMFS does not believe that performance standards alone would be adequate. Due to the need to have reliable VMS transceiver units that are suitable for fisheries applications, NMFS uses a type-approval process. With a type-approval process, VMS manufacturing companies submit for type-approval VMS transceiver units that meet minimum standards. The VMS transceiver units are field tested to assure that it will meet minimum performance requirements. NMFS believes it is necessary to conduct field testing on each model to determine if they will perform adequately over time in a harsh marine environment and in remote conditions before fishers invest in the equipment and before fisheries managers and enforcement are dependent on the data for managing the fisheries. New units may be added to the type approved list for a particular fishery as new equipment becomes available and is tested.

The open access fleet consists of smaller sized vessels, with most being under 40 feet (metric equiv),fishery management and enforcement may benefit from having smaller units capable of two-way communications. However, the extremely limited space, minimal electronic support for a system, and difficulty in protecting electronic equipment from the marine environment on a large portion of vessels in the open access fleet was considered in the initial type-approval of VMS transceiver units for the Pacific Coast groundfish fishery (68 FR 64860; November 17, 2003). At this time NMFS is considering revising the list of type-approved VMS transceiver units to include only VMS transceiver units that are capable of two-way communications which could support email or vessel logbooks(see comment 2 above).

Comment 4: One commenter recommended that NMFS refine the regulatory language requiring the VMS unit to be on the vessel and operational at all times to specifically state that the VMS unit must be energized at all times and cannot be turned on and off.

Response: NMFS believes that the language at § 660.312 (d)(3) regarding the vessel owner's responsibility to operate the mobile transceiver unit continuously 24 hours a day throughout the calendar year, unless such vessel is specifically exempted, adequately states that the VMS unit must be on at all times.

Comment 5: One commenter recommended that regulatory language be added to require vessels to contact NMFS before each departure to ensure that the VMS transceiver unit is operating properly. The commenter suggested that NMFS develop back-up procedures for reporting vessel positions using other communications such as cell phone, satellite phone, or radio, for vessels whose VMS transceiver units fail while the vessel is at sea. The commenter also suggests that NMFS provide back-up VMS units for vessels when their VMS transceiver units are being serviced.

Response: Declaration reports are used by NMFS to identify the fisher's intent to use the vessel to participate in a particular fishery with a specific gear. Because area restrictions are specific to the gear type and target fisheries, declaration reports are needed to adequately assess the vessel's activity in relation to the area restrictions. In the development of this action, NMFS considered measures that could be taken to reduce the reporting burden on the fishing industry, while still meeting the needs of NMFS. Because a single gear type is typically used for multiple trips, to reduce the reporting burden NMFS determined that it was adequate for each declaration report to be valid until a new declaration is made or until an exemption report is received. Unlike other fisheries with VMS, where vessels are at sea for extended periods, most of the participants in the open access fisheries make very short fishing trips (1–3 days). If a VMS transceiver unit fails, the vessel can be required to remain in port until the unit is repaired or they may use a replacement unit providing they register it with NMFS Office of Law Enforcement. Given the fishing behavior of the fleet and the added burden of reporting, NMFS does not believe that it is necessary to require vessels to provide declaration reports on every trip.

Comment 6: One commenter suggests that VMS position data be provided to fisheries managers so it can be compared to logbook and observer data. The commenter believes that restricting access to VMS data for enforcement purposes only will affect managers' ability to address bycatch issues.

Response: NMFS agrees that VMS data may provide much needed effort data to fisheries managers. Therefore, VMS data is available to fisheries managers upon request, providing the confidentiality standards set out in the Magnuson-Stevens Fishery Conservation and Management Act(Magnuson-Stevens Act) and policies established by NMFS Office for Law Enforcement are followed.

Comment 7: One commenter did not believe it was fair to require fishers to purchase VMS units until limited access restrictions for the open access fishery and quotas are decided.

Response: In the near future, the Council is scheduled to consider a license limitation program for the open access fisheries as well as harvest specifications and management measures for 2009 and 2010. Reasonably foreseeable future action by NMFS, including license limitation and future harvest specifications, were considered in the cumulative effects section (Section 4.4) of the environmental assessment for this action. The VMS is being required for open access vessels to aid in maintaining the integrity of existing depth-based management measures which were adopted for 2003 and are currently in effect in the open access fishery. NMFS believes it is necessary to adopt new measures to effectively and efficiently manage the existing fishery. If future NMFS action is taken that results in fishers leaving the open access fishery, provisions of this rulemaking allow the ownership to the VMS receiver units to transfer from one vessel owner to another vessel owner providing all the required documents are provided to NMFS OLE.

Comment 8: One commenter indicated that VMS was designed for monitoring big factory ships and large fleets that harvest millions of pounds of fish to be sure they are not overstepping their boundaries. The commenter does not believe that VMS is appropriate for the small class of vessels with small catches like the open access fishery.

Response: NMFS disagrees with the commenter. VMS is an effective enforcement tool for monitoring vessel location in relationship to geographical areas regardless of the class of vessel it is being used on. There are many open access vessels fishing near areas that are closed to reduce the catch of overfished species or to protect EFH.

Comment 9: Two commenters expressed concern about the cost of purchasing new VMS equipment and the cost to replace existing VMS equipment that may not be type-approved for the fishery. The commentors' concern was the relationship between the cost of the VMS equipment and the value of the open access catch, particularly for small scale fisheries that operate only a few months of the year.

Response: The cost burden of VMS includes the costs for installation, VMS transceiver unit, annual maintenance, replacement cost, cost to transmit hourly positions and declaration reports. The initial cost of the VMS transceiver units, including installation, vary from $1,200-$2,700 ($3,800 with a computer that meets the minimum specifications) per vessel. At this time, funds are available to reimburse fishers for the cost of purchasing a type-approved VMS transceiver unit to comply with requirements that become effective in 2007. However, these funds are available on a first-come first-served basis and not all fishers may be able to take advantage of this reimbursement program. Fishers who purchased VMS transceiver units before this rule was published will not be reimbursed for existing VMS transceivers, but could be reimbursed for new VMS transceivers.

The value of the fishery to the individual vessels and the individual fisher's ability to recover the costs associated with VMS varies widely between vessels and target fisheries. In part this is because the fishery is split between vessels targeting groundfish (directed OA fishery vessels) and vessels targeting other species but landing groundfish that were caught incidentally while targeting a non-groundfish species (incidental OA fishery vessels). The incidental commercial open access groundfish fishery consists of vessels fishing for Pacific halibut, California halibut, Dungeness crab, spot prawn, ridgeback prawn, California Sheephead, sea cucumber, pink shrimp, salmon and HMS that do not necessarily depend on revenue from the sale of groundfish as their a major source of income. However, it's difficult to segregate the fishery into directed and incidental vessels, and vessels may move between the categories with the choice depending on the intention of the fisher. Over the course of a year or during a single trip, a fisher may engage in different strategies and may switch between directed and incidental fishing categories.

Incidental fixed gear open access fishers who only land small amounts of incidentally caught groundfish may well choose to discard incidentally caught groundfish, rather than incur the cost of VMS and the burden of installation. Similarly, some fixed gear fishers may also choose to stay in state waters throughout the year rather than incur the cost of VMS and the burden of installation. NMFS recognizes that those vessels that are more actively engaged in the directed open access fishery and open access trawl fisheries will likely incur higher VMS costs than those that are not actively engaged in the directed open access fishery. However, without depth-based management, the open access fishery would likely be managed under very restrictive cumulative trip limits and seasons, which would result in much lower gross revenues for directed open access vessels, and greater restriction for incidental fishers.

Comment 10: One commenter indicted that the open access fishery did not need any further government regulations.

Response: When the Council recommended the adoption of depth-based management measures for 2003, the Council also recommended that NMFS take simultaneous action to implement a VMS monitoring program to ensure the integrity of the depth-based areas. Consistent with the Council's recommendation, NMFS implemented a pilot program in the limited entry fishery at the start of 2004 with the intention of expanding the program to the Open access fishery. This action follows the Council's original direction. As discussion in the response to comment 9, without VMS, depth-based management measures would need to be reconsidered.

Changes From the Proposed Rule

No changes were made from the regulatory text presented in the proposed rule as a result of the comments. One minor edit to remove the word ''and'' was made in § 660.312 (d)(4)(vii).

Classification

NMFS has determined that this final rule is consistent with the FMP and with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the economic impacts described in the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the complete FRFA is available from NMFS (see **ADDRESSES**).

Statement of Objective and Need: A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments: There were no significant issues raised by the public that were specific to the IRFA. However, two comments relate to the economic impacts of the rule. Comments 8 and 9 can be found along with their responses in the Comment and Response section of this preamble.

A description and an estimate of the number of small entities to which the rule will apply or an explanation why no such estimate is available: This action requires all commercial fishing vessels not registered to a limited entry groundfish permit that take and retain or possess groundfish in the EEZ (including transiting), or that land groundfish taken in the EEZ and all vessels using non-groundfish trawl gear to fish in the EEZ to have and use VMS. The installation of VMS equipment is projected to affect approximately 1,610 vessels, including: 322 vessels using longline gear (282 directed groundfish, 38 Pacific halibut, and 2 CA halibut); 193 vessels using pot gear (145 directed groundfish, 6 prawn, 21 Dungeness crab and 21 CA sheephead); 131 vessels using non-groundfish trawl gear (23 ridgeback prawn, 14 sea cucumber, and 40 CA halibut, and 54 pink shrimp vessels); 892 vessels using line gear (590 groundfish directed, 58 CA halibut, 10 HMS vessels, and 234 salmon troll vessels); and 72 vessels using net gear (25 HMS and 47 CA halibut). All of the affected entities are considered to be small businesses.

A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for the preparation of the report or record: In addition to obtaining VMS units, to support the VMS monitoring program, the following information must be submitted to NMFS: (1) VMS transceiver installation/activation certification reports, (2) hourly position reports, (3) exemption reports, and (4) declaration reports. Installation/activation reports require vessel owners and operators to follow specific procedures when installing or re-installing a VMS transceiver unit. For example, upon activation, the VMS installer must complete, sign, and return a certification form to NMFS. The form contains information on the VMS hardware and satellite communications services that are provided by private communications companies approved by NMFS. Hourly position reports are automatically transmitted to NMFS via satellite once the VMS transceiver unit is installed and activated. Vessels that are required to have VMS must operate the mobile transceiver unit continuously 24 hours a day. Exemption reports are optional. The exemption reports are sent by the vessel owner or operator when they want their vessel to be excused from the requirement to continuously operate the mobile transceiver unit 24 hours a day throughout the fishing year. Declaration reports are submitted to NMFS Office for Law Enforcement by telephone and are valid until revised by the vessel operator. Vessel operators making declaration reports receive a confirmation number that verifies that the reporting requirements were satisfied. After a vessel has made a declaration report to NMFS and has been confirmed for a specific gear category, it cannot fish with any gear other than a gear type that has been declared for the vessel.

The VMS units that are currently type-approved for this fishery range in cost and service features. This range allows the vessel owner flexibility in choosing the model that best fits the needs of their vessel. Vessels that have already purchased VMS transceiver units for other fisheries or for personal purposes have been given consideration. Vessels will be allowed to retain existing VMS transceivers provided they are on the list of type-approved models and have been upgraded, if necessary, to the level required for the fishery. Per vessel costs for a transceiver unit with installation are $1,200-$2,700 ($3,800 with a computer that meets the minimum specifications) in Year 1, and $250-$625 in subsequent years. Annual operating cost to harvesters include: maintenance $60-$160, and transmission fees $192-$730. Estimated purchase cost of VMS services to the fishing industry if all vessels remain in the fishery is $2,241,120 - $7,293,300 in year 1, and $309,120 - $1,175,300 in subsequent years. The added cost of VMS may result in vessels, likely those vessels with the lowest ex-vessel revenue from groundfish, choosing to not retain groundfish to avoid VMS requirements. The analysis assumes that vessels will pay for VMS. However, Federal funds have been identified for VMS reimbursements in 2007. The availability of these funds for reimbursement for the cost of purchasing a VMS transceiver unit is not guaranteed, but funds are anticipated to be available to open access fishers on a first-come first-served basis.

The benefits of VMS to the fishery participants include the potential for future increases in groundfish catch because the likelihood of Rockfish Conservation Area (RCA) integrity being maintained is increased. This would result in greater stability in the fishery and be of greatest benefit to fishers with a high degree of dependency on groundfish. VMS would allow for greater flexibility in the use of management rules, because accurate pot, longline, non-groundfish trawl, line and net gear fishing location data will be readily available for modeling total catch and making groundfish management decisions. VMS data could be used along with declaration reports, observer data, survey information, and fish ticket data to better refine estimates of total fishing mortality and reduce the uncertainty in managing the fishery inseason to stay within the harvest guidelines and OYs. For vessels that participate in the incidental open access fisheries, accurate VMS fishing location data may be beneficial to non-groundfish target fisheries management. Because pink shrimp vessels are currently permitted to fish in the RCAs, there is no increased benefit to the pink shrimp fishery over status quo, but there is benefit to the groundfish fishers from the increased protection that this provision will provide to groundfish Essential Fish Habitat.

Vessels required to carry VMS transceiver units will provide installation/activation reports, hourly position reports, exemption reports, and declaration reports. The installation and activation reports include contact information from open access vessels because there are no Federal permit requirements for open access fishery participants. Having contact information is necessary in the event that there are transmission problems, where NMFS will need to have ready access to contact information and installation information. The submission of declaration reports was initially proposed as per trip reports. Following consultation with fishery participants, it was determined that the needs of NMFS OLE and the United States Coast Guard (USCG) could be met with less frequently made declaration reports. Therefore, it was determined that a declaration report identifying the type of gear being used by a vessel would remain valid until revised by the vessel operator or an exemption report was sent. This results in a significant reduction in the number of reports.

A description of the steps the agency has taken to minimize the significant adverse economic impact on small entities, consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and the reason that each one of the other significant alternatives to the rule considered by the agency was rejected: Through Council processes including several public hearings along the coast, many alternatives were considered and crafted that weighed conservation and management needs against the economic impacts upon various components of the open access fleets.

Following consultation with fishery participants prior to implementation of the pilot VMS program in the limited entry fisheries, it was determined that some vessel owners may prefer to reduce the costs of reporting when leaving the EEZ off the coasts of Washington, Oregon, and California. Because a substantial number of permitted vessels also fish in waters off Alaska and in areas outside the EEZ, and because vessels are commonly pulled out of the water for extended periods, a VMS hourly report exemption option was added, which included an exemption report.

During the development of the expanded VMS program, additional exemptions were considered and proposed for vessels that transfer the limited entry permit from the vessel and do not engage in any fishing off the West Coast for the remainder of the year, vessels that depart the open access fishery for an extended period after the end of the fishing year, and for vessels that have had an emergency situation that resulted in vessel damage such as fire, flooding or other extensive physical damage that would require the VMS or power source to be disconnected. The exemption reports allow flexibility to the industry participants while providing NMFS OLE with the information needed to determine why a position report is not being received from the vessel.

Declaration reports have been required since January 1, 2004, for non-groundfish trawl vessels that are used to fish in any trawl RCAs or the Cowcod Conservation Areas (CCAs). Requiring declaration reports for all fishing, not just fishing in any trawl RCA or the CCA, will be an additional burden for these vessels. Non-groundfish trawl gear includes vessels fishing for pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber.

At the Council's June 2005 meeting, measures to protect groundfish EFH were considered, as mandated by the Magnuson-Stevens Act. Though the habitat protection measures have been developed as a separate action from the VMS program, monitoring measures such as VMS were considered as a tool for monitoring incursions into the many new habitat protection areas. As part of the habitat protection measures, the Council requested that VMS requirements for pink shrimp trawlers operating in the open access sector (those pink shrimp trawl vessels that are registered to limited entry permits are already required to have VMS) be included in the open access VMS analysis. Therefore, Alternative 4B was added to the EA/RIR/IRFA, with the difference being the inclusion of all pink shrimp trawl vessels.

A range of 13 alternatives, discussed in sections 2.0 and 4.0 of the EA for this action, was considered. The alternatives ranged from Alternative 1, status quo, which required declaration reports from open access non-groundfish trawl vessels that fish within a trawl RCA to Alternative 11, the preferred alternative being implemented by this final rule. The coverage levels identified as Alternatives 2–4A and 5A were based on different combinations of the open access gear groups. In order of coverage priority, the open access sectors initially identified as needing VMS coverage were: longline, groundfish pot, trawl (excluding shrimp), and line (excluding salmon). Alternative 2 requires all vessels using longline gear to have and use a VMS transceiver. Each of the Alternatives 3, 4 and 5A built on the previous alternative by adding the next open access gear group in order of priority.

At its September 2004 meeting, the Council recommended that NMFS expand the range to eight alternatives (Alternatives 1–4A, 5A, 5B, 6A and 7) and conduct further analysis. Alternative 5B was added and is based on Enforcement Consultants recommendations to the Council. Alternative 5B excludes vessels in fisheries where incidental catch of overfished species was considered to be very low; however, it includes salmon troll vessels. Alternative 6A, though modified by the Council, was based on the Groundfish Advisory Panel's (GAP) majority view. Under Alternative 6A, VMS would be required on any commercial fishing vessel for which an

RCA restriction applied. This alternative was viewed by the GAP as a simple and straightforward way to maintain the integrity of the RCAs. Alternative 7 is the GAP minority alternative, and is basically the same as Alternative 6A, except that vessels under 12 feet (ft) (3.7 meters) in length are excluded. Alternative 6B was recommended by the Ad Hoc VMS Committee. Alternative 6B is the same as Alternative 6A, except that only salmon troll vessels north of 40°10' N. lat. that fish pursuant to the harvest guidelines, quotas, and other management measures governing the open access fishery for groundfish species other than yellowtail rockfish would be required to carry and use a VMS transceiver and provide declaration reports.

At its April 2005 meeting, the Council specifically asked that NMFS examine new alternatives with thresholds for identifying vessels that land insignificant amounts of groundfish and low impact fisheries that could be considered as exceptions to the VMS requirement. In addition, concerns were expressed by the Council about of the cost of a VMS system to maintain the integrity of the RCA management regime for the open access fisheries being borne by industry. As a result of Council discussion, NMFS developed three new alternatives, identified as Alternatives 8–10. Alternative 8 was intended to exclude low impact OA fisheries from the VMS requirements. These low impact target fisheries and gear included: Dungeness crab pot, spot prawn pot, sea cucumber trawl, ridgeback prawn trawl, HMS line, and California sheephead pot. Alternative 9 was intended to identify vessels that directly targeted open access species. Vessels that land more than 500 lb (227 kilograms) of groundfish in a fishing year would have been included in the VMS and declaration requirements. Under Alternative 10, RCA management areas defined at 660.383 (c) would be discontinued and trip limits and seasons adjusted accordingly.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0478. Public reporting burden for this collection of information is estimated to average as follows: 4 minutes per response for each declaration report at an estimated time burden on the public of 2,848 hours annually for all 2,034 respondents; At 4 hours per response for installation (installation occurs one time every four years because VMS units have a 4 year service life) of the VMS transceiver unit and 5 minutes per response to send the installation/activation report with an estimated time burden to the public from all 2,034 respondents of 2,034 hours for installation of the VMS transceiver units and 41 hours annually for sending the installation/activation report; At 5 seconds per response for each hourly position report that is sent automatically by the VMS transceiver unit, the expected time burden on the public from all 2,034 respondents would be 24,747 hours annually; and at 4 minutes per response for each exemption report the expected time burden on the public from 500 respondents would be 64 hours annually. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and by e-mail to *David__Rostker@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal ESA section 7 consultation in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new West Coast Groundfish Observer Program data became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000. Since 1999, annual Chinook bycatch has averaged about 8,450. The Chinook Evolutionarily Significant Units (ESUs) most likely affected by the whiting fishery have generally improved in status since the 1999 ESA section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior ''no jeopardy'' conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) and the Southern Distinct Population Segment of green sturgeon (71 FR 17757, April 7, 2006) were recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the Council's Groundfish FMP. After reviewing the available information, NMFS concluded that, in keeping with section 7(a)(2) of the ESA, allowing the fishery to continue under this action would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. Pursuant to Executive Order 13175, this action was developed through the Council process with meaningful collaboration with tribal officials from the area covered by the FMP. The tribal representative on the Council did not make a motion on this action for tribal fisheries because this action does not apply to tribal fishers.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: December 1, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 660.302, the definitions for ''Closure'', ''Exempted gear'' and ''Groundfish Conservation Area or GCA'' are removed, the definitions for ''Fishing gear'' paragraph (11) introductory text, ''Open access fishery'' and ''Open access gear'' are revised, and the definitions for ''Closure or closed'', ''Conservation area(s)'' and ''Continuous transiting or transit through'' are added to read as follows:

§ 660.302 Definitions.

* * * * *

Closure or closed means, when referring to closure of a fishery or a closed fishery, that taking and retaining, possessing, or landing the particular species or species group covered by the fishing closure is prohibited. Unless otherwise announced in the **Federal Register** or authorized in this subpart, offloading must begin before the closure time.

* * * * *

Conservation area(s) means either a Groundfish Conservation Area (GCA), an Essential Fish Habitat Conservation Area (EFHCA), or both.

(1) *Groundfish Conservation Area or GCA* means a geographic area defined by coordinates expressed in degrees latitude and longitude, wherein fishing by a particular gear type or types may be prohibited. GCAs are created and enforced for the purpose of contributing to the rebuilding of overfished West Coast groundfish species. Regulations at § 660.390 define coordinates for these polygonal GCAs: Yelloweye Rockfish Conservation Areas, Cowcod Conservation Areas, waters encircling the Farallon Islands, and waters encircling the Cordell Banks. GCAs also include Rockfish Conservation Areas or RCAs, which are areas closed to fishing by particular gear types, bounded by lines approximating particular depth contours. RCA boundaries may and do change seasonally according to the different conservation needs of the different overfished species. Regulations at § § 660.390 through 660.394 define RCA boundary lines with latitude/longitude coordinates; regulations at Tables 3 5 of Part 660 set RCA seasonal boundaries. Fishing prohibitions associated with GCAs are in addition to those associated with EFH Conservation Areas.

(2) *Essential Fish Habitat Conservation Area or EFHCA* means a geographic area defined by coordinates expressed in degrees latitude and longitude, wherein fishing by a particular gear type or types may be prohibited. EFHCAs are created and enforced for the purpose of contributing to the protection of West Coast groundfish essential fish habitat. Regulations at §§ 660.396 - .399 define EFHCA boundary lines with latitude/longitude coordinates. Fishing prohibitions associated with EFHCAs, which are found at § 660.306, are in addition to those associated with GCAs.

Continuous transiting or transit through means that a fishing vessel crosses a groundfish conservation area or EFH conservation area on a constant heading, along a continuous straight line course, while making way by means of a source of power at all times, other than drifting by means of the prevailing water current or weather conditions.

* * * * *

Fishing gear * * *

(11) *Trawl gear* means a cone or funnel-shaped net that is towed through the water, and can include a pair trawl that is towed simultaneously by two boats. Groundfish trawl is trawl gear that is used under the authority of a valid limited entry permit issued under this subpart endorsed for trawl gear. It does not include any type of trawl gear listed as non-groundfish trawl gear. Non-groundfish trawl gear is any trawl gear other than the Pacific Coast groundfish trawl gear that is authorized for use with a valid groundfish limited entry permit. Non-groundfish trawl gear includes pink shrimp, ridgeback prawn, California halibut south of Pt. Arena, and sea cucumbers south of Pt. Arena.

* * * * *

Open access fishery means the fishery composed of commercial vessels using open access gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the harvest of open access allocations (detailed in § 660.320 and Tables 1–2 of this subpart) or governing the fishing activities of open access vessels (detailed in § 660.383 and Table 5 of this subpart.) Any commercial vessel that is not registered to a limited entry permit and which takes and retains, possesses or lands groundfish is a participant in the open access groundfish fishery.

Open access gear means all types of fishing gear except:

(1) Longline or trap (or pot) gear fished by a vessel that has a limited entry permit affixed with a gear endorsement for that gear.

(2) Groundfish trawl.

* * * * *

■ 3. In § 660.303, paragraph (d) is revised to readas follows:

§ 660.303 Reporting and recordkeeping.

* * * * *

(d) *Declaration reporting requirements*—(1) *Declaration reports for vessels registered to limited entry permits.* The operator of any vessel registered to a limited entry permit must provide NMFS OLE with a declaration report, as specified at paragraph(d)(5)(iv) of this section, before the vessel leaves port on a trip in which the vessel is used to fish in U.S. ocean waters between 0 and 200 nm offshore of Washington, Oregon, or California.

(2) *Declaration reports for all vessels using non-groundfish trawl gear.* The operator of any vessel that is not registered to a limited entry permit and which uses non-groundfish trawl gear to fish in the EEZ (3–200 nm offshore), must provide NMFS OLE with a declaration report, as specified at paragraph(d)(5)(iv) of this section, before the vessel leaves port to fish in the EEZ.

(3) *Declaration reports for open access vessels using non-trawl gear (all types of open access gear other than non-groundfish trawl gear).* The operator of

any vessel that is not registered to a limited entry permit, must provide NMFS with a declaration report, as specified at paragraph(d)(5)(iv) of this section, before the vessel leaves port on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ.

(4) *Declaration reports for tribal vessels using trawl gear.* The operator of any tribal vessel using trawl gear must provide NMFS with a declaration report, as specified at paragraph (d)(5)(iv) of this section, before the vessel leaves port on a trip in which fishing occurs within the trawl RCA.

(5) *Declaration reports.*

(i) The operator of a vessel specified in paragraphs (d)(1), (d)(2), and (d)(3) of this section must provide a declaration report to NMFS OLE prior to leaving port on the first trip in which the vessel meets the requirement specified at § 660.312 (b) to have a VMS.

(ii) The vessel operator must send a new declaration report before leaving port on a trip in which a gear type that is different from the gear type most recently declared for the vessel will be used. A declaration report will be valid until another declaration report revising the existing gear declaration is received by NMFS OLE.

(iii) During the period of time that a vessel has a valid declaration report on file with NMFS OLE, it cannot fish with a gear other than a gear type declared by the vessel.

(iv) Declaration reports will include: the vessel name and/or identification number, and gear type (as defined in paragraph(d)(5)(iv)(A) of this section). Upon receipt of a declaration report, NMFS will provide a confirmation code or receipt to confirm that a valid declaration report was received for the vessel. Retention of the confirmation code or receipt to verify that a valid declaration report was filed and the declaration requirement was met is the responsibility of the vessel owner or operator. Vessels using non-trawl gear may declare more than one gear type, however, vessels using trawl gear may only declare one of the trawl gear types listed in paragraph (d)(5)(iv)(A) of this section on any trip and may not declare non-trawl gear on the same trip in which trawl gear is declared.

(A) One of the following gear types must be declared:

(*1*) Limited entry fixed gear,

(*2*) [Reserved]

(*3*) Limited entry midwater trawl,

(*4*) Limited entry bottom trawl, not including demersal trawl,

(*5*) Limited entry demersal trawl,

(*6*) Non-groundfish trawl gear for pink shrimp,

(*7*) Non-groundfish trawl gear for ridgeback prawn,

(*8*) Non-groundfish trawl gear for California halibut,

(*9*) Non-groundfish trawl gear for sea cucumber,

(*10*) Open access longline gear for groundfish,

(*11*) Open access Pacific halibut longline gear,

(*12*) Open access groundfish trap or pot gear,

(*13*) Open access Dungeness crab trap or pot gear,

(*14*) Open access prawn trap or pot gear,

(*15*) Open access sheephead trap or pot gear,

(*16*) Open access line gear for groundfish,

(*17*) Open access HMS line gear,

(*18*) Open access salmon troll gear,

(*19*) Open access California Halibut line gear,

(*20*) Open access net gear,

(*21*) Other gear, and

(*22*) Tribal trawl.

(B) [Reserved]

* * * * *

■ 4. In § 660.306, paragraphs (h)(4) through (h)(10) are redesignated as (h)(5) through (h)(11), paragraphs (h)(1) through (h)(3) are revised, and a new paragraph (h)(4) is added, paragraphs (i)(7), (i)(8), (j)(1), and (j)(6) are revised, and (j)(7) and (j)(8) are added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(h) * * *

(1) Operate any vessel registered to a limited entry permit with a trawl endorsement and trawl gear on board in a applicable GCA (as defined at § 660.381 (d)), except for purposes of continuous transiting, with all groundfish trawl gear stowed in accordance with § 660.381(d), or except as authorized in the groundfish management measures published at § 660.381.

(2) Operate any vessel registered to a limited entry permit with a longline or trap (pot) endorsement and longline and/or trap gear onboard in an applicable GCA (as defined at § 660.382(c)), except for purposes of continuous transiting, with all groundfish longline and/or trap gear stowed in accordance with § 660.382(c) or except as authorized in the groundfish management measures at § 660.382.

(3) Operate any vessel with non-groundfish trawl gear onboard in any applicable GCA (as defined at § 660.383 (c)) except for purposes of continuous transiting, with all trawl gear stowed in accordance with § 660.383 (c), or except as authorized in the groundfish management measures published at § 660.383.

(4) Operate any vessel in an applicable GCA (as defined at § 660.383 (c)) that has non-trawl gear onboard and is not registered to a limited entry permit on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ, possess or land groundfish taken in the EEZ, except for purposes of continuous transiting, with all groundfish non-trawl gear stowed in accordance with § 660.383(c), or except as authorized in the groundfish management measures published at § 660.383.

* * * * *

(i) * * *

(7) Fail to provide departure or cease fishing reports specified at § 660.314 (c)(2).

(8) Fail to meet the vessel responsibilities specified at § 660.314 (d).

(j) * * *

(1) Use any vessel required to operate a VMS unit under § 660.312 (b) unless that vessel carries a NMFS OLE type-approved mobile transceiver unit and complies with all the requirements described at § 660.312.

* * * * *

(6) Register the same VMS transceiver unit to more than one vessel at the same time.

(7) Falsify any VMS activation report or VMS exemption report that is authorized or required, as specified at § 660.312.

(8) Falsify any declaration report that is required, as specified at § 660.303.

■ 5. In § 660.312, paragraphs (b),(d)(1),(d)(2) introductory text, (d)(2)(ii),(d)(3),(d)(4) introductory text, and (d)(4)(iii) and (iv) are revised, and (d)(4)(v) through (d)(4)(vii) are added to read as follows:

§ 660.312 Vessel Monitoring System (VMS) requirements.

* * * * *

(b) *Who is required to have VMS?* The following vessels are required to install a NMFS OLE type-approved mobile transceiver unit and to arrange for a NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE prior to fishing:

(1) Any vessel registered for use with a limited entry permit that fishes in state or Federal waters seaward of the

baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore).

(2) Any vessel that uses non-groundfish trawl gear to fish in the EEZ.

(3) Any vessel that uses open access gear to take and retain, or possess groundfish in the EEZ or land groundfish taken in the EEZ.

* * * * *

(d) * * *

(1) Obtain a NMFS OLE type-approved mobile transceiver unit and have it installed on board your vessel in accordance with the instructions provided by NMFS OLE. You may obtain a copy of the VMS installation and operation instructions from the NMFS OLE Northwest, VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115–6349, phone: (206) 526–6133.

(2) Activate the mobile transceiver unit, submit an activation report at least 72 hours prior to leaving port on a trip in which VMS is required, and receive confirmation from NMFS OLE that the VMS transmissions are being received before participating in a fishery requiring the VMS. Instructions for submitting an activation report may be obtained from the NMFS, Northwest OLE VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115–6349, phone: (206)526–6133. An activation report must again be submitted to NMFS OLE following reinstallation of a mobile transceiver unit or change in service provider before the vessel may participate in a fishery requiring the VMS.

* * * * *

(ii) *Transferring ownership of VMS unit.* Ownership of the VMS transceiver unit may be transferred from one vessel owner to another vessel owner if all of the following documents are provided to NMFS OLE: a new activation report, which identifies that the transceiver unit was previously registered to another vessel; a notarized bill of sale showing proof of ownership of the VMS transceiver unit; documentation from the communications service provider showing proof that the service agreement for the previous vessel was terminated and that a service agreement was established for the new vessel.

(3) *Transceiver unit operation.* Operate and maintain in good working order the mobile transceiver unit continuously 24 hours a day throughout the fishing year, unless such vessel is exempted under paragraph (d)(4) of this section. The mobile transceiver unit must transmit a signal accurately indicating the vessel's position at least once every hour, 24 hours a day, throughout the year unless a valid exemption report, as described in paragraph (b)(4) of this section, has been received by NMFS OLE. Less frequent position reporting at least once every four hours is authorized when a vessel remains in port for an extended period of time, but the mobile transceiver unit must remain in continuous operation at all times unless the vessel is exempted under this section.

(4) *VMS exemptions.* A vessel that is required to operate the mobile transceiver unit continuously 24 hours a day throughout the fishing year may be exempted from this requirement if a valid exemption report, as described at paragraph (d)(4)(vii) of this section, is received by NMFS OLE and the vessel is in compliance with all conditions and requirements of the VMS exemption identified in this section and specified in the exemption report.

* * * * *

(iii) *Permit transfer exemption.* If the limited entry permit has been transferred from a vessel (for the purposes of this section, this includes permits placed into ''unidentified'' status) the vessel may be exempted from VMS requirements providing the vessel is not used to fish in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore) for the remainder of the fishing year. If the vessel is used to fish in this area for any species of fish at any time during the remaining portion of the fishing year without being registered to a limited entry permit, the vessel is required to have and use VMS.

(iv) *Long-term departure exemption.* A vessel participating in the open access fishery that is required to have VMS under § 660.312 (b)(2) or 660.312 (b)(3) may be exempted from VMS provisions after the end of the fishing year in which it participated in the open access fishery, providing the vessel submits a completed exemption report signed by the vessel owner that includes a statement signed by the vessel owner indicating that the vessel will not be used to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ during the new fishing year.

(v) *Emergency exemption.* Vessels required to have VMS under 660.312(b) may be exempted from VMS provisions in emergency situations that are beyond the vessel owner's control, including but not limited to: fire, flooding, or extensive physical damage to critical areas of the vessel. A vessel owner may apply for an emergency exemption from the VMS requirements specified in § 660.312(b) for his/her vessel by sending a written request to NMFS OLE specifying the following information: The reasons for seeking an exemption, including any supporting documents (e.g., repair invoices, photographs showing damage to the vessel, insurance claim forms, etc.); the time period for which the exemption is requested; and the location of the vessel while the exemption is in effect. NMFS OLE will issue a written determination granting or denying the emergency exemption request. A vessel will not be covered by the emergency exemption until NMFS OLE issues a determination granting the exemption. If an exemption is granted, the duration of the exemption will be specified in the NMFS OLE determination.

(vi) *Submission of exemption reports.* Signed long-term departure exemption reports must be submitted by fax or by emailing a electronic copy of the actual report. In the event of an emergency in which an emergency exemption request will be submitted, initial contact with NMFS OLE must be made by telephone, fax or email within 24 hours from when the incident occurred. Emergency exemption requests must be requested in writing within 72 hours from when the incident occurred. Other exemption reports must be submitted through the VMS or another method that is approved by NMFS OLE and announced in the **Federal Register**. Submission methods for exemption requests, except long-term departures and emergency exemption requests, may include email, facsimile, or telephone. NMFS OLE will provide, through appropriate media, instructions to the public on submitting exemption reports. Instructions and other information needed to make exemption reports may be mailed to the vessel owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record for the vessel owner and is not received because the vessel owner's actual address has changed without notification to NMFS, as required at § 660.335(a)(2). Owners of vessels required to use VMS who do not receive instructions by mail are responsible for contacting NMFS OLE during business hours at least 3 days before the exemption is required to obtain information needed to make exemption reports. NMFS OLE must be contacted during business hours (Monday through Friday between 0800 and 1700 Pacific Time).

(vii) *Valid exemption reports.* For an exemption report to be valid, it must be received by NMFS at least 2 hours and not more than 24 hours before the exempted activities defined at paragraph (d)(4)(i) through (iv) of this section occur. An exemption report is valid until NMFS receives a report canceling the exemption. An exemption cancellation must be received at least 2 hours before the vessel re-enters the EEZ following an outside areas exemption; at least 2 hours before the vessel is placed back in the water following a haul out exemption; at least 2 hours before the vessel resumes fishing for any species of fish in state or Federal waters off the States of Washington, Oregon, or California after it has received a permit transfer exemption; or at least 2 hours before a vessel resumes fishing in the open access fishery after a long-term departure exemption. If a vessel is required to submit an activation report under § 660.312(d)(2)(i) before returning to fish, that report may substitute for the exemption cancellation. Initial contact must be made with NMFS OLE not more than 24 hours after the time that an emergency situation occurred in which VMS transmissions were disrupted and followed by a written emergency exemption request within 72 hours from when the incident occurred. If the emergency situation upon which an emergency exemption is based is resolved before the exemption expires, an exemption cancellation must be received by NMFS at least 2 hours before the vessel resumes fishing.

* * * * *

■ 6. In § 660.335, paragraph (f)(1) is revised to read as follows:

§ 660.335 Limited entry permits – renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.

* * * * *

(f) * * *

(1) A permit owner may designate the vessel registration fora permit as ‘‘unidentified,’’ meaning that no vessel has been identified as registered for use with that permit. No vessel is authorize to use a permit with the vessel registration designated as ‘‘unidentified.’’ A vessel owner who removes a permit from his vessel and registers that permit as ‘‘unidentified’’ is not exempt from VMS requirements at § 660.312 unless specifically authorized by that section.

* * * * *

■ 7. In § 660.381, paragraph (b)(4), (c)(4), (d) introductory text, (d)(4) and (d)(5) are revised to read as follows:

§ 660.381 Limited entry trawl fishery management measures.

* * * * *

(b) * * *

(4) *Large footrope trawl gear.* Large footrope gear is bottom trawl gear with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope). Fishing with bottom trawl gear with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins, or other material encircling or tied along the length of the footrope) is prohibited anywhere in EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.395.

* * * * *

(c) * * *

(4) *More than one type of trawl gear on board.* The cumulative trip limits in Table 3 (North) or Table 3 (South) of this subpart must not be exceeded.

(i) The following restrictions apply to vessels operating north of 40°10′ N. lat.:

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may not have both bottom trawl gear and midwater trawl gear onboard simultaneously. A vessel may have more than one type of limited entry bottom trawl gear on board, either simultaneously or successively, during a cumulative limit period.

(B) If a vessel fishes exclusively with large or small footrope trawl gear during an entire cumulative limit period, the vessel is subject to the small or large footrope trawl gear cumulative limits and that vessel must fish seaward of the RCA during that limit period.

(C) If a vessel fishes exclusively with selective flatfish trawl gear during an entire cumulative limit period, then the vessel is subject to the selective flatfish trawl gear cumulative limits during that limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA.

(D) If more than one type of bottom trawl gear (selective flatfish, large footrope, or small footrope) is on board, either simultaneously or successively, at any time during a cumulative limit period, then the most restrictive cumulative limit associated with the bottom trawl gear on board during that cumulative limit period applies for the entire cumulative limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA.

(E) If a vessel fishes both north and south of 40°10′ N. lat. with any type of small footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear (See crossover provisions at § 660.370(h)(8).)

(F) Midwater trawl gear is allowed only for vessels participating in the primary whiting season.

(ii) The following restrictions apply to vessels operating south of 40°10′ N. lat.:

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may not have both bottom trawl gear and midwater trawl gear onboard simultaneously. A vessel may not have small footrope trawl gear and any other type of bottom trawl gear onboard simultaneously.

(B) For vessels using more than one type of trawl gear during a cumulative limit period, limits are additive up to the largest limit for the type of gear used during that period. (Example: If a vessel harvests 300 lb (136 kg) of chilipepper rockfish with small footrope gear, it may harvest up to 11,700 lb (5,209 kg) of chilipepper rockfish with large footrope gear during July and August 2007, because the largest cumulative limit for chilipepper rockfish during that period is 12,000 lb (5,443 kg)for large footrope gear.)

(C) If a vessel fishes both north and south of 40°10’ N. lat. with any type of small footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear (See crossover provisions at § 660.370(h)(8).)

(d) *Groundfish Conservation Areas (GCAs) applicable to trawl vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. The latitude and longitude coordinates of the GCA boundaries are specified at §§ 660.390 through 660.394. A vessel that is fishing within a GCA listed in this paragraph(d) with trawl gear authorized for use within a GCA may not have any other type of trawl gear on board the vessel. The following GCAs apply to vessels participating in the limited entry trawl fishery.

* * * * *

(4) *Trawl rockfish conservation areas.* The trawl RCAs are closed areas, defined by specific latitude and longitude coordinates which are specified at §§ 660.390 through 660.394. Boundaries for the trawl RCAs applicable to groundfish trawl vessels throughout the year are provided in the header to Table 3 (North) and Table 3 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c).

(i) It is unlawful to operate a vessel with trawl gear onboard within the trawl RCA, except for the purpose of continuous transiting, or when the use of trawl gear is authorized in this section. It is lawful to fish with groundfish trawl gear within the trawl RCA only under the following conditions: vessels fishing with mid-water trawl gear on Pacific whiting trips during the primary whiting season, provided a valid declaration report has been filed with NMFS OLE, as required at § 660.303(d); and vessels fishing with demersal seine gear between 38° N. lat. and 36° N. lat. shoreward of a boundary line approximating the 100 fm (183 m) depth contour as defined at § 660.393, provided a valid declaration report has been filed.

(ii) Trawl vessels may transit through an applicable GCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either: below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. These restrictions do not apply to vessels fishing with midwater trawl gear for whiting during a primary season.

(iii) It is unlawful to take and retain, possess, or land groundfish taken with limited entry trawl gear within the trawl RCA, unless otherwise authorized in this section.

(iv) If a vessel fishes in the trawl RCA, it may not participate in any fishing on that trip that is prohibited within the trawl RCA. [For example, if a vessel participates in the pink shrimp fishery within the RCA, the vessel cannot on the same trip participate in the DTS fishery seaward of the RCA.] Nothing in these Federal regulations supercedes any state regulations that may prohibit trawling shoreward of the fishery management area (3–200 nm).

(5) *Essential Fish Habitat Conservation Areas.* An EFHCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude at § § 660.395 through 660.399, where specified types of fishing are prohibited in accordance with § 660.306. EFHCAs apply to vessels using bottom trawl gear or to vessels using ''bottom contact gear,'' which is defined at § 660.302 to include bottom trawl gear, among other gear types.

(i) The following EFHCAs apply to vessels operating within the West Coast EEZ with bottom trawl gear:

(A) *Seaward of a boundary line approximating the 700–fm (1280–m) depth contour.* Fishing with bottom trawl gear is prohibited in waters of depths greater than 700 fm (1280 m) within the EFH, as defined by specific latitude and longitude coordinates at § 660.395 and § 660.396.

(B) *Shoreward of a boundary line approximating the 100–fm (183 m) depth contour.*Fishing with bottom trawl gear with a footrope diameter greater than 8 inches (20 cm) is prohibited in waters shoreward of a boundary line approximating the 100–fm (183–m) depth contour, as defined by specific latitude and longitude coordinates at § 660.393.

(C) *EFHCAs for all bottom trawl gear.* Fishing with bottom trawl gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at § 660.397 - .398: Olympic 2, Biogenic 1, Biogenic 2, Grays Canyon, Biogenic 3, Astoria Canyon, Nehalem Bank/Shale Pile, Siletz Deepwater, Daisy Bank/ Nelson Island, Newport Rockpile/ Stonewall Bank, Heceta Bank, Deepwater off Coos Bay, Bandon High Spot, Rogue Canyon.

(D) *EFHCAs for all bottom trawl gear, except demersal seine gear.* Fishing with bottom trawl gear except demersal seine gear (defined at § 660.302) is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at § 660.399: Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Point Arena North, Point Arena South Biogenic Area, Cordell Bank/Biogenic Area, Farallon Islands/Fanny Shoal, Half Moon Bay, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, East San Lucia Bank, Point Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), and Cowcod EFH Conservation Area East.

(ii) *EFHCAs for bottom contact gear, which includes bottom trawl gear.* Fishing with bottom contact gear, including bottom trawl gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.398 through 660.399: Thompson Seamount, President Jackson Seamount, Cordell Bank (50 fm (91 m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara. Fishing with bottom contact gear is also prohibited within the Davidson Seamount EFH Area, which is defined with specific latitude and longitude coordinates at § 660.395.

■ 8. In § 660.382, paragraph (c) introductory text, and paragraphs (c)(4)(i), (c)(4)(ii), (c)(5), and (c)(8) are revised to read as follows:

§ 660.382 Limited entry fixed gear fishery management measures.

* * * * *

(c) *Groundfish Conservation Areas applicable to limited entry fixed gear vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. The latitude and longitude coordinates of the GCA boundaries are specified at §§ 660.390 through 660.394. A vessel that is authorized by this paragraph to fish within a GCA (e.g. fishing for ''other flatfish'' using no more than 12 hooks, ''Number 2'' or smaller), may not simultaneously have other gear on board the vessel that is unlawful to use for fishing within the GCA. The following GCAs apply to vessels participating in the limited entry fixed gear fishery.

* * * * *

(4) * * *

(i) Fishing for ''other flatfish'' is permitted within the CCAs under the following conditions: when using no more than 12 hooks, ''Number 2'' or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line; and provided a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE.

(ii) Fishing for rockfish and lingcod is permitted shoreward of the 20 fm (37 m) depth contour within the CCAs when trip limits authorize such fishing, and provided a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE.

(5) *Non-trawl Rockfish Conservation Areas (RCA).* The non-trawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.390 through 660.394) designed to approximate specific depth contours, where fishing for groundfish with non-trawl gear is prohibited. Boundaries for the non-trawl RCA throughout the year are provided in the header to Table 4 (North) and Table 4 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c).

(i) It is unlawful to operate a vessel with limited entry non-trawl gear in the non-trawl RCA, except for the purpose of continuous transit, or when the use of limited entry non-trawl gear is authorized in Part 660. It is unlawful to take and retain, possess, or land groundfish taken with limited entry non-trawl gear within the non-trawl RCA, unless otherwise authorized in Part 660.

(ii) Limited entry non-trawl vessels may transit through the non-trawl RCA, with or without groundfish on board, provided all groundfish non-trawl gear is stowed either: below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all lines, so that it is rendered unusable for fishing.

(iii) The non-trawl RCA restrictions in this section apply to vessels registered to fixed gear limited entry permits fishing for species other than groundfish with non-trawl gear on trips where groundfish species are retained. Unless otherwise authorized by Part 660, a vessel may not retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the non-trawl RCA. If a vessel fishes in a non-groundfish fishery in the non-trawl RCA, it may not participate in any fishing for groundfish on that trip that is prohibited within the non-trawl RCA. [For example, if a vessel participates in the salmon troll fishery within the RCA, the vessel cannot on the same trip participate in the sablefish fishery outside of the RCA.]

(iv) It is lawful to fish within the non-trawl RCA with limited entry fixed gear only under the following conditions: when fishing for ''other flatfish'' off California (between 42° N. lat. south to the U.S./Mexico border) using no more than 12 hooks, ''Number 2'' or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1–lb (0.91 kg) weights per line when trip limits authorize such fishing, provided a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE.

* * * * *

(8) *Essential Fish Habitat Conservation Areas.* An EFHCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude at §§ 660.396 through 660.399, where specified types of fishing are prohibited in accordance with § 660.306. EFHCAs apply to vessels using ''bottom contact gear,'' which is defined at § 660.302 to include limited entry fixed gear (longline and pot/trap,) among other gear types. Fishing with all bottom contact gear, including longline and pot/trap gear, is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at § 660.398 and § 660.399: Thompson Seamount, President Jackson Seamount, Cordell Bank (50 fm (91 m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara. Fishing with bottom contact gear is also prohibited within the Davidson Seamount EFH Area, which is defined by specific latitude and longitude coordinates at § 660.395.

■ 9. In § 660.383, paragraphs (b)(1), (c) introductory text, (c)(5)(i), (c)(5)(ii), (c)(6), (c)(7), and (c)(10) are revised to read as follows:

§ 660.383 Open access fishery management measures.

* * * * *

(b) * * *

(1) *Non-groundfish trawl gear.* Non-groundfish trawl gear is any trawl gear other than limited entry groundfish trawl gear as described at § 660.381(b) and as defined at § 660.302 for trawl vessels with limited entry groundfish permits. Non-groundfish trawl gear is generally trawl gear used to target pink shrimp, ridgeback prawn, California halibut and sea cucumber. Non-groundfish trawl gear is exempt from the limited entry trawl gear restrictions at § 660.381(b). Fishing with bottom trawl gear with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins, or other material encircling ro tied along the length of the footrope) is prohibited anywhere in EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.395.

* * * * *

(c) *Groundfish Conservation Areas Affecting Open Access Vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. A vessel that is authorized by this paragraph to fish within a GCA (e.g. fishing for ''other flatfish'' using no more than 12 hooks, ''Number 2'' or smaller), may not simultaneously have other gear on board the vessel that is unlawful to use for fishing within the GCA. The following GCAs apply to vessels participating in the open access groundfish fishery.

* * * * *

(5) * * *

(i) Fishing for ''other flatfish'' is permitted within the CCAs under the following conditions: when using no more than 12 hooks, ''Number 2'' or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line; and provided a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE.

(ii) Fishing for rockfish and lingcod is permitted shoreward of the 20 fm (37 m) depth contour within the CCAs when trip limits authorize such fishing, and provided a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE.

(6) *Non-trawl Rockfish Conservation Areas for the open access fisheries.* The non-trawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.390 through 660.394) designed to approximate specific depth contours, where fishing for groundfish with non-trawl gear is prohibited. Boundaries for the non-trawl RCA throughout the year are provided in the open access trip limit tables, Table 5 (North) and Table 5(South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c).

(i) It is unlawful to operate a vessel in the non-trawl RCA that has non-trawl gear onboard and is not registered to a limited entry permit on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ, or land groundfish taken in the EEZ, except for the purpose of continuous transiting, or when the use of non-trawl gear is authorized in part 660.

(ii) On any trip on which a groundfish species is taken with non-trawl open access gear and retained, the open access non-trawl vessel may transit through the non-trawl RCA only if all groundfish non-trawl gear is stowed either: below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all lines, so that it is rendered unusable for fishing.

(iii) The non-trawl RCA restrictions in this section apply to vessels taking and retaining or possessing groundfish in the EEZ, or landing groundfish taken in the EEZ. Unless otherwise authorized by Part 660, a vessel may not retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the non-trawl RCA. If a vessel fishes in a non-groundfish fishery in the non-trawl RCA, it may not participate in any fishing for groundfish on that trip that is prohibited within the non-trawl RCA. [For example, if a vessel participates in the salmon troll fishery within the RCA, the vessel cannot on the same trip participate in the sablefish fishery outside of the RCA.]

(iv) Fishing for ''other flatfish'' off California (between 42° N. lat. south to the U.S./Mexico border) is permitted within the non-trawl RCA with fixed gear only under the following conditions: when using no more than 12 hooks, ''Number 2'' or smaller, which measure no more than 11 mm (0.44

inches) point to shank, and up to two 1–lb (0.91 kg) weights per line when trip limits authorize such fishing; and provided a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE.

(7) *Non-groundfish Trawl Rockfish Conservation Areas for the open access non-groundfish trawl fisheries.* The non-groundfish trawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.390 through 660.394) designed to approximate specific depth contours, where fishing for groundfish with non-trawl gear is prohibited. Boundaries for the non-trawl RCA throughout the year are provided in the open access trip limit tables, Table 5 (North) and Table 5 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c).

(i) It is unlawful to operate in the non-groundfish trawl RCA with non-groundfish trawl gear onboard, except for the purpose of continuous transiting, or when the use of trawl gear is authorized in part 660. It is unlawful to take and retain, possess, or land groundfish taken with non-groundfish trawl gear within the non-trawl RCA, unless otherwise authorized in part 660.

(ii) Non-groundfish trawl vessels may transit through the non-groundfish trawl RCA, with or without groundfish on board, provided all non-groundfish trawl gear is stowed either: below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors.

(iii) The non-groundfish trawl RCA restrictions in this section apply to vessels taking and retaining or possessing groundfish in the EEZ, or landing groundfish taken in the EEZ. Unless otherwise authorized by Part 660, it is unlawful for a vessel to retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the non-groundfish trawl RCA. If a vessel fishes in a non-groundfish fishery in the non-groundfish trawl RCA, it may not participate in any fishing on that trip that is prohibited within the non-groundfish trawl RCA. [For example, if a vessel participates in the pink shrimp fishery within the RCA, the vessel cannot on the same trip participate in the DTS fishery seaward of the RCA.] Nothing in these Federal regulations supercedes any state regulations that may prohibit trawling shoreward of the fishery management area (3–200 nm).

(iv) It is lawful to fish with non-groundfish trawl gear within the non-groundfish trawl RCA only under the following conditions:

(A) Pink shrimp trawling is permitted in the non-groundfish trawl RCA when a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE. Groundfish caught with pink shrimp trawl gear may be retained anywhere in the EEZ and are subject to the limits in Table 5 (North) and Table 5 (South) of this subpart.

(B) When the shoreward line of the trawl RCA is shallower than 100 fm (183 m), vessels using ridgeback prawn trawl gear south of 34°27.00′ N. lat. may operate out to the 100 fm (183 m) boundary line specified at § 660.393 when a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE. Groundfish caught with ridgeback prawn trawl gear are subject to the limits in Table 5 (North) and Table 5 (South) of this subpart.

* * * * *

(10) *Essential Fish Habitat Conservation Areas.* An EFHCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude at §§ 660.396 through 660.399, where specified types of fishing are prohibited in accordance with § 660.306. EFHCAs apply to vessels using bottom trawl gear and or vessels using ‘‘bottom contact gear,’’ which is defined at § 660.302 and includes, but is not limited to: beam trawl, bottom trawl, dredge, fixed gear, set net, demersal seine, dinglebar gear, and other gear (including experimental gear) designed or modified to make contact with the bottom.

(i) The following EFHCAs apply to vessels operating within the West Coast EEZ with bottom trawl gear:

(A) *Seaward of a boundary line approximating the 700–fm (1280–m) depth contour.* Fishing with bottom trawl gear is prohibited in waters of depths greater than 700 fm (1280 m) within the EFH, as defined by specific latitude and longitude coordinates at § 660.395 and § 660.396.

(B) *Shoreward of a boundary line approximating the 100–fm (183–m) depth contour.* Fishing with bottom trawl gear with a footrope diameter greater than 8 inches (20 cm) is prohibited in waters shoreward of a boundary line approximating the 100–fm (183–m) depth contour, as defined by specific latitude and longitude coordinates at § 660.393.

(C) *EFHCAs for all bottom trawl gear.* Fishing with all bottom trawl gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.397 through 660.398: Olympic 2, Biogenic 1, Biogenic 2, Grays Canyon, Biogenic 3, Astoria Canyon, Nehalem Bank/Shale Pile, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Heceta Bank, Deepwater off Coos Bay, Bandon High Spot, Rogue Canyon.

(ii) *EFHCAs for all bottom trawl gear, except demersal seine gear.* Fishing with all bottom trawl gear except demersal seine gear (defined at § 660.302) is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at § 660.399: Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Point Arena North, Point Arena South Biogenic Area, Cordell Bank/Biogenic Area, Farallon Islands/Fanny Shoal, Half Moon Bay, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, East San Lucia Bank, Point Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), and Cowcod EFH Conservation Area East.

(iii) *EFHCAs for bottom contact gear, which includes bottom trawl gear.* Fishing with bottom contact gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.398–.399: Thompson Seamount, President Jackson Seamount, Cordell Bank (50–fm (91–m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara. Fishing with bottom contact gear is also prohibited within the Davidson Seamount EFH Area, which is defined by specific latitude and longitude coordinates at § 660.395.

* * * * *

[FR Doc. E7–23812 Filed 12–6–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 72, No. 235

Friday, December 7, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–1059–200748b; FRL–8502–9]

Approval and Promulgation of Implementation Plans Georgia: Enhanced Inspection and Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Georgia State Implementation Plan, submitted by the Georgia Department of Natural Resources, through the Georgia Environmental Protection Division, on September 26, 2007. The revisions include modifications to Georgia's Air Quality Rules found at Chapter 391–3–20–.21, pertaining to rules for Enhanced Inspection and Maintenance (I/M). Enhanced I/M was required for 1-hour nonattainment areas classified as serious and above, under the Clean Air Act (CAA) as amended in 1990. The I/M program is a way to ensure that vehicles are maintained properly and verify that the emission control system is operating correctly, in order to reduce vehicle-related emissions. This action is being taken pursuant to section 110 of the CAA.

DATES: Written comments must be received on or before January 7, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–1059, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: harder.stacy@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2007–1059,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8965. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: November 28, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E7–23713 Filed 12–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2007–0011; FRL–8503–3]

RIN 2060–AN72

Standards of Performance for Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Data Availability (NODA).

SUMMARY: EPA is issuing this NODA in support of the proposed rule published on May 14, 2007, entitled Standards of Performance for Petroleum Refineries. EPA received a number of comments on the proposed rule and is in the process of evaluating those comments. During the review of recently received comments, we determined that data and analyses were inadvertently left out of the docket EPA–HQ–OAR–2007–0011.

This NODA notifies the public that we have added data and analyses to the docket and provides an additional comment period for the proposed rule. Comments on all aspects of this proposal are welcome.

DATES: Comments must be received on or before January 7, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0011, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* EPA Docket Center (2822T), Docket ID No. EPA–HQ–OAR–2007–0011, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (2822T), EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments on the NODA to Docket ID No. EPA–HQ–OAR–2007–0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material will be publicly available only in hard copy. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Mr. Robert B. Lucas, identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Lucas, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Research Triangle Park, NC 27711; telephone number: (919) 541–0884; e-mail address: *lucas.bob@epa.gov*.

SUPPLEMENTARY INFORMATION:

Submitting CBI. Do not submit information that you consider to be CBI electronically through *www.regulations.gov or e-mail.* Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, Attention Docket ID EPA–HQ–OAR–2007–0011. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule published on May 14, 2007, is available on the WWW through the Technology Transfer Network (TTN). A copy of the proposed rule is posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

List of Subjects for 40 CFR Part 60

Environmental protection, Air pollution control, New source performance standards, Reporting and recordkeeping requirements.

Dated: November 30, 2007.

Jennifer E.N. Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E7–23824 Filed 12–6–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 231

RIN 0750–AF85

Defense Federal Acquisition Regulation Supplement; Allowability of Costs To Lease Government Equipment for Display or Demonstration (DFARS Case 2007–D004)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address limitations on the allowability of contractor costs associated with the leasing of Government equipment for display or demonstration. The proposed rule specifies that monies paid to the Government for the leasing of Government equipment are unallowable, except in the case of foreign military sales contracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before February 5, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2007–D004, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2007–D004 in the subject line of the message.
- *Fax:* 703–602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. John McPherson, OUSD (AT&L) DPAP (CPF), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. John McPherson, 703–602–0296.

SUPPLEMENTARY INFORMATION:

A. Background

DoD Directive 7230.8, Leases and Demonstrations of DoD Equipment, contains policy on the leasing of DoD equipment to defense contractors for demonstration to foreign governments or for display or demonstration at international trade shows and exhibitions. In addition to the leasing of equipment, contractors may obtain related support services from DoD. The Directive provides that the contractor leasing the equipment may not recover the DoD charges associated with the lease, directly or indirectly through any U.S. Government contract, except to the extent chargeable to contracts for foreign military sales. For consistency with the policy in DoD Directive 7230.8, this proposed rule adds DFARS text to address the limitations on the allowability of costs associated with the leasing of Government equipment.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is consistent with existing DoD policy, and applies only in those situations where a contractor chooses to lease military equipment for display or demonstration purposes. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2007–D004.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 225 and 231

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 225 and 231 as follows:

1. The authority citation for 48 CFR parts 225 and 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7303–2 is amended by revising paragraph (b) and adding paragraph (e) to read as follows:

225.7303–2 Cost of doing business with a foreign government or an international organization.

* * * * *

(b) Costs not allowable under FAR Part 31 are not allowable in pricing FMS contracts, except as noted in paragraphs (c) and (e) of this subsection.

* * * * *

(e) The limitations on allowability of costs associated with leasing Government equipment, in 231.205–1, do not apply to FMS contracts.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Section 231.205–1 is added to read as follows:

231.205–1 Public relations and advertising costs.

(e) See 225.7303–2(e) for allowability provisions affecting foreign military sales contracts.

(f) Unallowable public relations and advertising costs also include monies paid to the Government associated with the leasing of Government equipment, including lease payments and reimbursement for support services, except for foreign military sales contracts as provided for at 225.7303–2.

[FR Doc. E7–23654 Filed 12–6–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 228, 231, and 252

RIN 0750–AF72

Defense Federal Acquisition Regulation Supplement; Ground and Flight Risk Clause (DFARS Case 2007–D009)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise and combine contract clauses addressing assumption of risk for loss under contracts involving the furnishing of aircraft to the Government. The proposed rule establishes requirements that apply consistently to all contract types.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before February 5, 2008 to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2007–D009, using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: dfars@osd.mil. Include DFARS Case 2007–D009 in the subject line of the message.

Fax: 703–602–7887.

Mail: Defense Acquisition Regulations System, Attn: Ms. Robin Schulze, OUSD (AT&L) DPAP (CPF), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, 703–602–0326.

SUPPLEMENTARY INFORMATION

A. Background

The clauses at DFARS 252.228–7001, Ground and Flight Risk, and DFARS 252.228–7002, Aircraft Flight Risk, are presently used in contracts involving the furnishing of aircraft to the Government. The clause at 252.228–7001 is used in negotiated fixed-price contracts, and the clause at 252.228–7002 is used in cost-reimbursement contracts. This proposed rule revises and combines the two clauses into a single ground and flight risk clause, to establish requirements that apply consistently to all contract types. In addition, a new section is added at DFARS 231.205–19 to specifically reference the treatment of insurance costs under the new clause and the existing clause at DFARS 252.217–7012, Liability and Insurance.

The proposed changes include—

- Addition of a requirement for inclusion of the clause in all subcontracts;
- Addition of a statement that the Government property clause is not applicable if the Government withdraws its self-insurance coverage;
- Addition of a statement that commercial insurance costs or self-insurance charges that duplicate the Government's self-insurance are unallowable; and

○ Establishment of a share of loss for the contractor that is the lesser of $100,000 or 20 percent of the estimated contract cost or price. This is consistent with the contractor share of loss presently specified in the clause at 252.228–7002. The clause at 252.228–7001 presently prescribes a share of loss of $25,000 for the contractor.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the proposed rule is to clearly and consistently address the responsibilities of the Government and the contractor with regard to incidents that may occur under contracts involving the furnishing of aircraft to the Government. The proposed rule will apply to DoD contractors, and their subcontractors, under contracts for the acquisition, development, production, or servicing of aircraft. Excluded are contracts for activities strictly incidental to the normal operations of an aircraft; contracts awarded under FAR Part 12, Acquisition of Commercial Items; and contracts where a non-DoD customer does not assume risk for loss of or damage to the aircraft. The impact on small entities is unknown at this time. However, historically, most contractors engaged in this type of contract have been large business concerns.

DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2007–D009.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 228, 231, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 228, 231, and 252 as follows:

1. The authority citation for 48 CFR parts 228, 231, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 228—BONDS AND INSURANCE

2. Section 228.370 is amended as follows:

a. By revising paragraph (b);

b. By removing paragraph (c); and

c. By redesignating paragraphs (d) through (f) as paragraphs (c) through (e) respectively. The revised text reads as follows:

228.370 Additional clauses.

* * * * *

(b)(1) Use the clause at 252.228–7001, Ground and Flight Risk, in solicitations and contracts for the acquisition, development, production, modification, maintenance, repair, or overhaul of aircraft, except those solicitations and contracts—

(i) That are strictly for activities incidental to the normal operations of the aircraft (e.g., refueling operations, minor non-structural actions not requiring towing such as replacing aircraft tires due to wear and tear);

(ii) That use FAR Part 12 procedures and are for the development or production of aircraft; or

(iii) For which a non-DoD customer (including a foreign military sales customer) has not agreed to assume the risk for loss or destruction of, or damages to, the aircraft.

(2) The clause at 252.228–7001 may be modified only as follows:

(i) Include a modified definition of ''aircraft'' if the contract covers other than conventional types of winged aircraft, i.e., helicopters, vertical take-off or landing aircraft, lighter-than-air airships, unmanned aerial vehicles, or other nonconventional aircraft. The modified definition should describe a stage of manufacture comparable to the standard definition.

(ii) Modify ''in the open'' to include ''hush houses,'' test hangars and comparable structures, and other designated areas.

(iii) Expressly define the ''contractor's premises'' where the aircraft will be located during and for contract performance. These locations may include contract premises which are owned or leased by the contractor or subcontractor, or premises where the contractor or subcontractor is a permittee or licensee or has a right to use, including Government airfields.

(iv) Revise paragraph (e)(3) of the clause to provide Government assumption of risk for transportation by conveyance on streets or highways when transportation is—

(A) Limited to the vicinity of contractor premises; and

(B) Incidental to work performed under the contract.

(3) Follow the procedures at PGI 228.370(b) when using the clause at 252.228–7001.

* * * * *

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Section 231.205–19 is added to read as follows:

231.205–19 Insurance and indemnification.

(e) In addition to the cost limitations in FAR 31.205–19(e), self-insurance and purchased insurance costs are subject to the requirements of the clauses at 252.217–7012, Liability and Insurance, and 252.228–7001, Ground and Flight Risk.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.228–7001 is revised to read as follows:

252.228–7001 Ground and Flight Risk.

As prescribed in 228.370(b), use the following clause:

GROUND AND FLIGHT RISK (XXX 2007)

(a) *Definitions*. As used in this clause—

(1) *Aircraft*, unless otherwise provided in the contract Schedule, means—

(i) Aircraft to be delivered to the Government under this contract (either before or after Government acceptance), including complete aircraft and aircraft in the process of being manufactured, disassembled, or reassembled; provided that an engine, portion of a wing or a wing is attached to a fuselage of the aircraft;

(ii) Aircraft, whether in a state of disassembly or reassembly, furnished by the Government to the Contractor under this contract, including all Government property installed, in the process of installation, or temporarily removed; provided that the aircraft and property are not covered by a separate bailment agreement;

(iii) Aircraft furnished by the Contractor under this contract (either before or after Government acceptance); or

(iv) Conventional winged aircraft, as well as helicopters, vertical take-off or landing aircraft, lighter-than-air airships, unmanned aerial vehicles, or other nonconventional aircraft specified in this contract.

(2) *Contractor's managerial personnel* means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or other equivalent representatives who supervise or direct all or substantially all of the Contractor's—

(i) Business;

(ii) Operations at any one plant or separate location at which this contract is performed; or

(iii) Operations at a separate and complete major industrial operation in connection with the performance of this contract.

(3) *Contractor's premises* means those premises, including subcontractors' premises, designated in the Schedule or in writing by the Contracting Officer, and any other place the aircraft is moved for safeguarding.

(4) *Flight* means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) For land-based aircraft, ''flight'' begins with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) For seaplanes, ''flight'' begins with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run and is beached at a ramp on the Contractor's premises.

(iii) For helicopters, ''flight'' begins upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged.

(iv) For vertical take-off or landing aircraft, ''flight'' begins upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been engaged to any launching platform or device on the Contractor's premises.

(v) All aircraft off the Contractor's premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of this contract, or landings approved in writing by the Contracting Officer.

(5) *Flight crew member* means the pilot, the co-pilot, and, unless otherwise provided in the Schedule, the flight engineer, navigator, and bombardier-navigator when assigned to their respective crew positions for the purpose of conducting any flight on behalf of the Contractor. It also includes any pilot or operator of an unmanned aerial vehicle. If required, a defense systems operator may also be assigned as a flight crew member.

(6) *In the open* means located wholly outside of buildings on the Contractor's premises or other places described in the Schedule as being ''in the open.'' Government-furnished aircraft shall be considered to be located ''in the open'' at all times while in the Contractor's possession, care, custody, or control.

(7) *Operation* means operations and tests of the aircraft and its installed equipment, accessories, and power plants, while the aircraft is in the open or in motion. The term does not apply to aircraft on any production line or in flight.

(b) *Combined regulation/instruction.* The Contractor shall be bound by the operating procedures contained in the combined regulation/instruction entitled ''Contractor's Flight and Ground Operations'' (Air Force Instruction 10–220, Army Regulation 95–20, NAVAIR Instruction 3710.1 (Series), Coast Guard Instruction M13020.3, and Defense Contract Management Agency Instruction 8210.1) in effect on the date of contract award.

(c) *Government as self-insurer.* Subject to the conditions in paragraph (d) of this clause, the Government self-insures and assumes the risk of damage to, or loss or destruction of aircraft ''in the open,'' during ''operation,'' and in ''flight,'' except as may be specifically provided in the Schedule as an exception to this clause. The Contractor shall not be liable to the Government for such damage, loss, or destruction beyond the Contractor's share of loss amount under the Government's self-insurance.

(d) *Conditions for Government's self-insurance.* The Government's assumption of risk for aircraft in the open shall continue unless the Contracting Officer finds that the Contractor has failed to comply with paragraph (b) of this clause, or that the aircraft is in the open under unreasonable conditions, and the Contractor fails to take prompt corrective action.

(1) The Contracting Officer, when finding that the Contractor has failed to comply with paragraph (b) of this clause or that the aircraft is in the open under unreasonable conditions, shall notify the Contractor in writing and shall require the Contractor to make corrections within a reasonable time.

(2) Upon receipt of the notice, the Contractor shall promptly correct the cited conditions, regardless of whether there is agreement that the conditions are unreasonable.

(i) If the Contracting Officer later determines that the cited conditions were not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred in correcting the conditions.

(ii) Any dispute as to the unreasonableness of the conditions or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(3) If the Contracting Officer finds that the Contractor failed to act promptly to correct the cited conditions or failed to correct the conditions within a reasonable time, the Contracting Officer may terminate the Government's assumption of risk for any aircraft in the open under the cited conditions. The termination will be effective at 12:01 a.m. on the fifteenth day following the day the written notice is received by the Contractor.

(i) If the Contracting Officer later determines that the Contractor acted promptly to correct the cited conditions or that the time taken by the Contractor was not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred as a result of termination of the Government's assumption of risk.

(ii) Any dispute as to the timeliness of the Contractor's action or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(4) If the Government terminates its assumption of risk pursuant to the terms of this clause—

(i) The Contractor shall thereafter assume the entire risk for damage, loss, or destruction of the affected aircraft;

(ii) Any costs incurred by the Contractor (including the costs of the Contractor's self-insurance, insurance premiums paid to insure the Contractor's assumption of risk, deductibles associated with such purchased insurance, etc.) to mitigate its assumption of risk are unallowable costs; and

(iii) The Government Property clause of this contract is not applicable to the affected aircraft.

(5) The Contractor shall promptly notify the Contracting Officer when unreasonable conditions have been corrected.

(i) If, upon receipt of the Contractor's notice of the correction of the unreasonable conditions, the Government elects to again assume the risk of loss and relieve the Contractor of its liability for damage, loss, or destruction of the aircraft, the Contracting Officer will notify the Contractor of the Contracting Officer's decision to resume the Government's risk of loss. The Contractor shall be entitled to an equitable adjustment in the contract price for any insurance costs extending from the end of the third working day after the Government's receipt of the Contractor's notice of correction until the Contractor is notified that the Government will resume the risk of loss.

(ii) If the Government does not again assume the risk of loss and the unreasonable conditions have been corrected, the Contractor shall be entitled to an equitable adjustment for insurance costs, if any, extending after the third working day after the Government's receipt of the Contractor's notice of correction.

(6) The Government's termination of its assumption of risk of loss does not relieve the Contractor of its obligation to comply with all other provisions of this clause, including the combined regulation/instruction entitled ''Contractor's Flight and Ground Operations.''

(e) *Exclusions from the Government's assumption of risk.* The Government's assumption of risk shall not extend to damage, loss, or destruction of aircraft which—

(1) Results from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open and during operation in accordance with sound industrial practice, including oversight of such a program of a subcontractor;

(2) Is sustained during flight if either the flight or the flight crew members have not been approved in advance of any flight in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation/instruction entitled ''Contractor's Flight and Ground Operations'';

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) Is covered by insurance;

(5) Consists of wear and tear; deterioration (including rust and corrosion); freezing; or mechanical, structural, or electrical breakdown or failure, unless these are the result of other loss, damage or destruction covered by this clause. (This exclusion does not apply to Government-furnished property if damage consists of reasonable wear and tear or deterioration, or results from inherent vice, e.g., a known condition or design defect in the property); or

(6) Is sustained while the aircraft is being worked on and is a direct result of the work unless such damage, loss, or destruction would be covered by insurance which would have been maintained by the Contractor, but for the Government's assumption of risk.

(f) *Contractor's share of loss and Contractor's deductible under the Government's self-insurance.*

(1) The Contractor assumes the risk of loss and shall be responsible for the Contractor's share of loss under the Government's self-insurance. That share is the lesser of—

(i) The first $100,000 of loss or damage to aircraft in the open, during operation, or in flight resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence of Government personnel; or

(ii) Twenty percent of the estimated price or cost of this contract.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (j) of this clause shall not include the dollar amount of the risk assumed by the Contractor.

(3) In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government, as directed by the Contracting Officer, the lesser of—

(i) $100,000;

(ii) Twenty percent of the estimated price or cost of this contract; or

(iii) The amount of the loss.

(4) The costs incurred by the Contractor for its share of the loss and for insuring against that loss are unallowable costs, including but not limited to—

(i) The Contractor's share of loss under the Government's self-insurance;

(ii) The costs of the Contractor's self-insurance;

(iii) The deductible for any Contractor-purchased insurance;

(iv) Insurance premiums paid for Contractor-purchased insurance; and

(v) Costs associated with determining, litigating, and defending against the Contractor's liability.

(g) *Subcontractor possession or control.* The Contractor shall not be relieved from liability for damage, loss, or destruction of aircraft while such aircraft is in the possession or control of its subcontractors, except to the extent that the subcontract, with the written approval of the Contracting Officer, provides for relief from each liability. In the absence of approval, the subcontract shall contain provisions requiring the return of aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract.

(h) *Contractor's exclusion of insurance costs.* The Contractor warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance covering damage, loss, or destruction of aircraft while in the open, during operation, or in flight when the risk has been assumed by the Government, including the Contractor share of loss in this clause, even if the assumption may be terminated for aircraft in the open.

(i) *Procedures in the event of loss.*

(1) In the event of damage, loss, or destruction of aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft, and to put all aircraft in the best possible order. Except in cases covered by paragraph (f)(2) of this clause, the Contractor shall furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering the interest in commingled property.

(2) The Contracting Officer will make an equitable adjustment for expenditures made by the Contractor in performing the obligations under this paragraph.

(j) *Loss prior to delivery.*

(1) If prior to delivery and acceptance by the Government, aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either—

(i) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage, in which event the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance; or

(ii) Terminate this contract with respect to the aircraft. Notwithstanding the provisions in any other termination clause under this contract, in the event of termination, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines—

(A) It would have cost the Contractor to complete the aircraft (or any work to be performed on the aircraft) together with anticipated profit on uncompleted work; and

(B) Would be the value of the damaged aircraft or any salvage retained by the Contractor.

(2) The Contracting Officer shall prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any parts of the aircraft. If any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due the Contractor. Failure of the parties to agree upon termination costs or an equitable adjustment with respect to any aircraft shall be considered a dispute under the Disputes clause of this contract.

(k) *Reimbursement from a third party.* In the event the Contractor is reimbursed or compensated by a third party for damage, loss, or destruction of aircraft and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for damage, loss, or destruction. Upon the request of the Contracting Officer or authorized representative, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation) in obtaining recovery.

(l) *Subcontracts.* The Contractor shall incorporate the requirements of this clause, including this paragraph (l), in all subcontracts.

(End of clause)

252.228–7002 [Removed]

5. Section 252.228–7002 is removed and reserved.

252.228–7003 [Amended]

6. Section 252.228–7003 is amended in the introductory text by removing ''228.370(d)'' and adding in its place ''228.370(c)''.

252.228–7005 [Amended]

7. Section 252.228–7005 is amended in the introductory text by removing ''228.370(e)'' and adding in its place ''228.370(d)''.

252.228–7006 [Amended]

8. Section 252.228–7006 is amended in the introductory text by removing ''228.370(f)'' and adding in its place ''228.370(e)''.

[FR Doc. E7–23657 Filed 12–6–07; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register

Vol. 72, No. 235

Friday, December 7, 2007

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: January 7, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.
2. If approved, the action will result in authorizing small entities to furnish the products and service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Brush, Dish, Ergo, Soap Squirting & Refill

NSN: M.R. 871.
NSN: M.R. 872.
Coverage: C-List for the requirements of the Defense Commissary Agency, Fort Lee, VA.
NPA: Cincinnati Association for the Blind, Cincinnati, OH.

Liner, Low Density, Linear

NSN: 8105–00–NIB–1292.
Coverage: C-List for the requirements of the Defense Commissary Agency, Fort Lee, VA.
NPA: Envision, Inc., Wichita, KS.
Contracting Activity: Defense Commissary Agency (DeCA), Fort Lee, VA.

Pallet, Demo Sideboard

NSN: 3990CAAA9243—30'' X 44''.
Coverage: C-List for the requirements of the Crane Army Ammunition Activity, Crane, IN.
NPA: Bona Vista Programs, Inc., Kokomo, IN.
Contracting Activity: U.S. Department of the Defense, Crane Army Ammunition Activity, Crane, IN.

Service

Service Type/Location: Custodial Services, National Institute of Standards & Technology (NIST), Facility-Wide, Gaithersburg, MD.
NPA: Didlake, Inc., Manassas, VA.
Contracting Activity: National Institutes of Standards & Technology, Gaithersburg, MD.

Kimberly M. Zeich,
Director, Program Operations.

[FR Doc. E7–23790 Filed 12–6–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

DATES: *Effective Date:* January 7, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On October 12, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 58051) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities.

The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Janitorial Services, Ventura Veterans Center, 790 East Santa Clara Street, Ventura, CA.
NPA: Association for Retarded Citizens—Ventura County, Inc., Ventura, CA.
Contracting Activity: Department of Veterans Affairs, Long Beach, CA.
Service Type/Location: Medical Transcription, Naval Medical Center (NMCSD), 34800 Bob Wilson Drive, San Diego, CA.
NPA: Lighthouse for the Blind of Houston, Houston, TX.
Contracting Activity: Fleet and Industrial Supply Center, San Diego, CA.

Deletions

On October 12, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 58051) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

Meal Kits

NSN: 8970–01–E59–0242B.
NSN: 8970–01–E59–0243B.
NPA: UNKNOWN.
Contracting Activity: U.S. Property and Fiscal Officer for Louisiana, New Orleans, LA.

Meal Kits

NSN: 8970–00–NSH–0012A.
NSN: 8970–00–NSH–0013A.
NSN: 8970–01–E59–0239B.
NSN: 8970–01–E59–0240B.
NSN: 8970–01–E59–0241B.
NSN: 8970–01–E59–0244B.
NSN: 8970–01–E59–0245A.
NPA: UNKNOWN.
Contracting Activity: U.S. Property and Fiscal Officer for Louisiana, New Orleans, LA.
Contracting Activity: National Guard Bureau, Oklahoma, OK.
Contracting Activity: National Guard Bureau, Topeka, KS.

Services

Service Type/Location: Custodial Services, Department of Homeland Security, Border Patrol—Curlew Station, Curlew, WA.
NPA: Ferry County Community Services, Republic, WA.
Contracting Activity: U.S. Bureau of Customs & Border Protection, Spokane, WA.
Service Type/Location: Janitorial/Custodial, Naval & Marine Corps Reserve Center, Billings, MT.
NPA: Community Option Resource Enterprises, Inc., Billings, MT.
Contracting Activity: Naval Facilities Engineering Command, Everett, WA.
Service Type/Location: Janitorial/Custodial, Wallace Ranger District of the Panhandle National Fores, Coeur d'Alene, ID.
NPA: TESH, Inc., Couer d'Alene, ID,
Contracting Activity: Panhandle National Forest, Coeur d'Alene, ID.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Facility, Salem, OR.
NPA: Garten Services, Inc., Salem, OR.
Contracting Activity: Department of the Army, Fort Lewis, WA.
Service Type/Location: Janitorial/Custodial, U.S. Federal Building, Courthouse and Post Office, Moscow, ID.
NPA: UNKNOWN.
Contracting Activity: General Services Administration, Auburn, WA.
Service Type/Location: Janitorial/Grounds Maintenance, Federal Courthouse, Pocatello, ID.
NPA: New Day Products, Inc., Pocatello, ID.
Contracting Activity: General Services Administration, Public Buildings Service, Auburn, WA.
Service Type/Location: Janitorial/Grounds Maintenance, Pactola Harney Ranger District Recreation Areas, Black Hills National Forest, Custer, SD.
NPA: Southern Hills Developmental Services, Inc., Hot Springs, SD.
Contracting Activity: U.S. Department of Agriculture, Custer, SD.
Service Type/Location: Tub & Burlap Washing, Rogue River National Forest, J. Herbert Stone Nursery, Central Point, OR.
NPA: Living Opportunities, Inc., Medford, OR.
Contracting Activity: U.S. Department of Agriculture, Forest Service, Medford, OR.

Kimberly M. Zeich,
Director, Program Operations.

[FR Doc. E7–23791 Filed 12–6–07; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1533]

Grant of Authority for Subzone Status NACCO Materials Handling Group, Inc. (Forklift Truck Components) Sulligent, AL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City of Birmingham, grantee of Foreign-Trade Zone 98, has made application for authority to establish special-purpose subzone status at the forklift truck components manufacturing facility of NACCO Materials Handling Group, Inc., located in Sulligent, Alabama (Docket 37–2006, filed 8–22–2006);

Whereas, notice inviting public comment was given in the **Federal Register** (71 FR 51183, 8–29–2006); and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the production of forklift truck components, engines, and drive axles at the manufacturing facility of NACCO Materials Handling Group, Inc., located in Sulligent, Alabama (Subzone 98D), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 27th day of November 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST: ________________________

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–23802 Filed 12–6–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1535]

Grant of Authority for Subzone Status NACCO Materials Handling Group, Inc. (Forklift Trucks) Berea, KY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, has made application for authority to establish special-purpose subzone status at the forklift truck manufacturing and distribution facilities of NACCO Materials Handling Group, Inc., located in Berea, Kentucky (Docket 39–2006, filed 9–8–2006, amended 7–2–2007 to include an additional site);

Whereas, notice inviting public comment was given in the **Federal Register** (71 FR 54612, 9–18–2006; 72 FR 39051, 7–13–2007); and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the production of forklift trucks at the manufacturing and distribution facilities of NACCO Materials Handling Group, Inc., located in Berea, Kentucky (Subzone 29I), as described in the application and **Federal Register** notices, subject to the FTZ Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 27th day of November 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST: ________________________

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–23799 Filed 12–6–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1537]

Approval of Expansion of Authority for Subzone 57B; Volvo Construction Equipment North America, Inc. (Construction Equipment); Skyland, NC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Volvo Construction Equipment North America, Inc. (Volvo CENA), operator of FTZ Subzone 57B, has requested authority to expand capacity and the scope of manufacturing authority under zone procedures within Subzone 57B at the company's facilities in Skyland, North Carolina (FTZ Docket 20–2007, filed 5/30/07);

Whereas, notice inviting public comment has been given in the **Federal Register** (72 FR 31051, 6/5/07); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby approves the expansion of capacity and scope of manufacturing authority under zone procedures within Subzone 57B at the Volvo CENA plant located in Skyland, North Carolina, as described in the application and the **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 30th day of November 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman. Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–23798 Filed 12–6–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1534]

Grant of Authority for Subzone Status NACCO Materials Handling Group, Inc. (Forklift Trucks) Greenville, NC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the North Carolina Global TransPark Authority, grantee of Foreign-Trade Zone 214, has made application for authority to establish special-purpose subzone status at the forklift truck manufacturing and distribution facilities of NACCO Materials Handling Group, Inc., located in Greenville, North Carolina (Docket 38–2006, filed 9–8–2006, amended 7–2–2007 to include an additional site);

Whereas, notice inviting public comment was given in the **Federal Register** (71 FR 54612, 9–18–2006; 72 FR 38562, 7–13–2007); and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the production of forklift trucks at the manufacturing and distribution facilities of NACCO Materials Handling Group, Inc., located in Greenville, North Carolina (Subzone 214B), as described in the application and **Federal Register** notices, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 27th day of November 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST: ____________________

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–23801 Filed 12–6–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–838]

Carbazole Violet Pigment 23 from India: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from an interested party, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on carbazole violet pigment 23 from India. The review covers one manufacturer/exporter, Alpanil Industries. The period of review is December 1, 2005, through November 30, 2006. We have preliminarily determined that Alpanil Industries made sales below normal value. We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument a statement of each issue and a brief summary of the argument.

EFFECTIVE DATE: December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5760 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2004, we published in the **Federal Register** the antidumping duty order on carbazole violet pigment 23 (CVP 23) from India. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbazole Violet Pigment 23 From India*, 69 FR 77988 (December 29, 2004) (*Antidumping Duty Order*). On December 1, 2006, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on CVP 23 from India. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 69543 (December 1, 2006). On December 29, 2006, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), Alpanil Industries (Alpanil) requested an administrative review of the antidumping duty order on CVP 23 from India. On February 2, 2007, in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review of this order. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007). On August 22, 2007, we extended the due date for the completion of the preliminary results of review from September 4, 2007, to October 19, 2007. See *Carbazole Violet Pigment 23 from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 46954 (August 22, 2007). On October 16, 2007, we extended the due date for the completion of the preliminary results from October 19, 2007, to December 3, 2007. See *Carbazole Violet Pigment 23 from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 58639 (October 16, 2007). The administrative review of the order on CVP 23 from India for Alpanil covers the period December 1, 2005, through November 30, 2006.

Scope of the Order

The merchandise subject to this antidumping duty order is carbazole violet pigment 23 (CVP–23) identified as Color Index No. 51319 and Chemical Abstract No. 6358 30 1, with the chemical name of diindolo [3,2–b:3¡¬,2¡¬–m] triphenodioxazine, 8,18–dichloro–5, 15–diethy–5, 15–dihydro-, and molecular formula of C34H22C12N4O2.[1] The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.*, pigment dispersed in oleoresins, flammable solvents, water) are not included within the scope of the order. The merchandise subject to this antidumping duty order is classifiable under subheading 3204.17.90.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

United States Sales

U.S. Customs and Border Protection (CBP) data we obtained indicate that CBP suspended the liquidation of only a portion of the U.S. sales of subject merchandise reported by Alpanil. Therefore, pursuant to section 751(a)(2)(A) of the Act, we limited this review to these sales of CVP 23.

Export Price

To determine whether sales of CVP 23 from India to the United States were made at prices less than normal value, we compared the U.S. price to the normal value. For the price of sales by Alpanil to the United States, we used export price as defined in section 772(a) of the Act because the subject merchandise was first sold to an unaffiliated purchaser in the United States. Section 772(a) of the Act defines export price as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under

---

[1] The bracketed section of the product description, [3,2–b:3¡¬,2¡¬-m], does not contain business- proprietary information. In this case, the brackets are simply part of the chemical nomenclature. See *Antidumping Duty Order*.

subsection (c).'' We calculated Alpanil's export price based on the prices of the subject merchandise sold to unaffiliated customers in, or for exportation to, the United States. See section 772(c) of the Act. We made deductions for movement expenses incurred in India and international movement expenses incurred for sales of the subject merchandise to the United States in accordance with section 772(c)(2)(A) of the Act.

Section 772(c)(1)(C) of the Act requires the Department to increase export price by the amount of the countervailing duty imposed on the subject merchandise to offset an export subsidy. The countervailing–duty order on CVP 23 from India is currently in effect. See *Notice of Countervailing Duty Order: Carbazole Violet Pigment 23 From India*, 69 FR 77995 (December 29, 2004). In preparing these preliminary results of review, we determined that no adjustment is appropriate in this case. Due to the business–proprietary nature of our decision, please see the Alpanil preliminary analysis memorandum dated December 3, 2007 (Preliminary Analysis Memorandum), at 4.

Alpanil reported that it calculated its U.S. credit expenses by using the short–term U.S. interest rate that it derived from the U.S. Federal Reserve statistical release at *http://www.federalreserve.gov/releases/h15/data/m/prime.tx*. We found that the Federal Reserve statistical release for short–term interest rate for the period of review does not support the U.S. credit expenses Alpanil reported. Therefore, we recalculated a U.S. short–term interest rate of 6.7975 percent for the period of review based on the U.S. Federal Reserve statistical release and used this rate to recalculate Alpanil's U.S. credit expenses. See Preliminary Analysis Memorandum at 5 for more details on our calculation methodology.

Comparison–Market Sales

In order to determine whether there was a sufficient volume of sales in the comparison market to serve as a viable basis for calculating normal value, we compared the volume of home–market sales of the foreign like product in India to the volume of the U.S. sales of the subject merchandise in accordance with section 773(a)(1) of the Act. Based on this comparison of the aggregate quantities of the home–market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of the foreign like product sold by Alpanil in the home market was greater than five percent of its aggregate volume of the sales of the subject merchandise and therefore sufficient to permit a proper comparison with the sales of the subject merchandise, pursuant to section 773(a)(1) of the Act. Thus, we determined that Alpanil's home market was viable as the comparison market during the period of review. See section 773(a)(1) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value for the respondent on the prices at which the foreign like product was first sold for consumption in India in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the comparison–market sales. See the ''Level of Trade'' section below for more details.

Model–Matching Methodology

We compared U.S. sales with sales of the foreign like product in the home market. Specifically, in making our comparisons, we attempted to make comparisons to weighted–average monthly home–market prices that were based on all sales of the identical product. Because no identical match was found, we matched similar merchandise on the basis of the comparison product which was closest in terms of the physical characteristics to the product sold in the United States. These characteristics, in the order of importance, are form, stability, dispersion, and tone. We made comparisons to weighted–average monthly home–market prices that were based on all sales of the most–similar product to the U.S. product. Because we were able to match all U.S. products to similar home–market products, we did not need to calculate the constructed value of the U.S. product as the basis for normal value.

Normal Value

We based normal value for Alpanil on the prices of the foreign like products sold to its comparison–market customers. When applicable, we made adjustments for differences in packing and movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. Because we calculated normal value using sales of similar merchandise, we also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments for differences in circumstances of sale to cover differences in payment terms in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made circumstance–of-sale adjustments by deducting home–market direct selling expenses from, and adding U.S. direct selling expenses to, normal value.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determined normal value based on sales in the home market at the same level of trade as the export–price sales. The normal–value level of trade is based on the starting price of the sales in the home market. For export–price sales, the U.S. level of trade is based on the starting price of the sales to the U.S. market.

We examined the differences in selling activities reported in Alpanil's responses to our requests for information. Alpanil reported two customer categories and three channels of distribution for its home–market sales. The two customer categories are end–users and distributors and the three channels of distribution are end–users, large distributors, and small distributors. Alpanil divided its channels of distribution based on the quantity of the customer's usual order. Alpanil mixed different customer categories within each channel of distribution and reported differences in selling functions for each channel. Alpanil reported that the selling activities in these channels were similar with no meaningful differences.

With respect to its home–market sales, Alpanil reported that it incurred expenses for the following selling functions and activities for all three channels of distribution: sales forecasting, sales promotion, inventory maintenance, order input/processing, direct sales personnel, and sales/marketing support. Alpanil reported that it paid commissions to consignees for sales to end–users and small distributors and provided after–sales services to distributors.[2] We examined

[2] Alpanil reported that it provided cash discounts and freight deliveries to end-users, small distributors, and large distributors, paid for advertising and technical assistance to end-users and small distributors, and paid rebates to small distributors. We did not take these selling functions into account in our level-of-trade analysis because no evidence on the record supports Alpanil's assertion that it performed these selling functions. Alpanil did not report direct or indirect expenses for these selling functions in its home-market sales database. We reviewed Alpanil's breakdown of home-market indirect selling expenses and found that Alpanil did not incur expenses for these selling functions as indirect selling expenses. Also, even though Alpanil reported that it provided after-sales services to end-users, we find that it provided after-sales services not to end-users but to distributors. Alpanil provided billing adjustments for a small number of home-market sales to distributors to cover expenses they incurred to customize the

Continued

Alpanil's selling activities described above and found them to be similar with respect to sales forecasting, sales promotion, inventory maintenance, order input/processing, direct sales personnel, and sales/marketing support. We examined Alpanil's payment of commission and after–sales services and found that, because Alpanil performed these two selling functions for only a small number of sales transactions and because Alpanil's other selling functions described above are similar, they are not sufficient for us to find different levels of trade in the home market. Therefore, we find that Alpanil has one level of trade in its home market.

Alpanil reported two channels of distribution for two categories of U.S. customers, end–users and trading companies. Alpanil reported that the selling activities were identical for all U.S. customer categories. With respect to its export–price sales, Alpanil reported that it incurred expenses for sales forecasting, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, and freight and delivery.[3]

Therefore, we find that sales in the U.S. market were made at one level of trade. We also find that the U.S. level of trade was the same as that of the home–market level of trade, given that Alpanil's selling functions associated with its home–market level of trade were similar with no meaningful differences to those associated with the U.S. market level of trade. They were similar with respect to sales forecasting, inventory maintenance, order input/processing, direct sales personnel, and sales/marketing support. Thus, we were able to match Alpanil's export–price sales to sales at the same level of trade in the home market and no level–of-trade adjustment was necessary.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the weighted–average dumping margin on CVP 23 from India for the period December 1, 2005, through November 30, 2006, for Alpanil is 23.41 percent.

Comments

We will disclose the calculations used in our analysis to parties to this review within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Interested parties who wish to request a hearing or to participate in a hearing if a hearing is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain the following: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice of preliminary results of review. Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. We intend to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer–specific per–unit assessment amount by dividing the total dumping duties due by the number of units in the sales we analyzed.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by Alpanil for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of CVP 23 from India entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash–deposit rate for Alpanil will be the rate established in the final results of this review; (2) for a previously investigated company, the cash–deposit rate will continue to be the company–specific rate published in *Antidumping Duty Order*, 69 FR at 77989; (3) if the exporter is not a firm covered in this review or the less–than-fair–value investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash–deposit rate will be 27.48 percent, the ''all–others'' rate published in *Antidumping Duty Order*, 69 FR at 77989. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importer

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 3, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E7–23805 Filed 12–6–07; 8:45 am]

BILLING CODE 3510–DS–S

---

products after sales. Other than the selling-function chart, Alpanil did not provide any evidence on the record that it provided after-sales services to end-users.

[3] Alpanil reported that direct sales personnel and sales/marketing support are not sales activities for its exports to the United States. We found that these two selling activities did take place in Alpanil's export-price sales because Alpanil sold the subject merchandise to the United States and reported the names of its employees involved directly in the sales to the United States and their salaries.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–845]

Glycine from India: Postponement of Final Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: December 7, 2007.

FOR FURTHER INFORMATION CONTACT: George Callen or Kristin Case, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0180 and (202) 482–3174, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Final Determination

On April 19, 2007, the Department of Commerce (the Department) initiated the antidumping duty investigations of Glycine from India, Japan, and the Republic of Korea. See *Glycine from India, Japan, and the Republic of Korea: Initiation of Antidumping Duty Investigations*, 72 FR 20816 (April 26, 2007). The notice of initiation stated that the Department would issue its preliminary determinations for these investigations no later than 140 days after the date of initiation (*i.e.*, September 6, 2007), unless postponed, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act). On August 23, 2007, in response to a timely request from the petitioner, Geo Speciality Chemicals, Inc., we postponed the preliminary determination to October 26, 2007. See *Glycine from India: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 72 FR 48257 (August 23, 2007). On October 26, 2007, and November 1, 2007, we issued our affirmative preliminary and amended preliminary determinations in this investigation, respectively. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from India*, 72 FR 62827 (November 7, 2007), and *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Glycine from India*, 72 FR 62826 (November 7, 2007).

On November 2, 2007, and November 9, 2007, Paras Intermediates Pvt. Ltd. (Paras), the only respondent that received a calculated rate in the preliminary determination of this investigation, made timely requests for a postponement of the final determination pursuant to section 735(a)(2) of the Act and extension of provisional measures with respect to glycine from India. See also 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2). Paras requested postponement of the final determination in order to allow sufficient time to prepare for verification and to ensure the Department adequate time to conduct its verification, which was scheduled originally during a period which coincided with an important Indian holiday.

For the reasons identified by Paras and because there are no compelling reasons to deny the request, the Department is postponing the deadline for the final determination with respect to India under section 735(a)(2) of the Act to 135 days after the date on which the preliminary determination was published. The date of the final determination will be no later than March 21, 2008. The Department is also extending the provisional measures accordingly.

This notice is issued and published pursuant to sections 735(a)(2) and 771(i)(1) of the Act and 19 CFR 351.210(g).

Dated: November 30, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–23804 Filed 12–6–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–817]

Certain Hot–Rolled Carbon Steel Flat Products From Thailand: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from United States Steel Corporation (petitioner), Nucor Corporation (Nucor), and G Steel Public Company Limited (G Steel), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products (hot–rolled steel) from Thailand. With regard to the two Thai companies that are subject to this administrative review, G Steel and Nakornthai Strip Mill Public Company Limited (NSM), we preliminarily determine that sales of subject merchandise produced by G Steel have not been made at less than normal value (NV) and that NSM did not have any shipments, entries, or sales of subject merchandise during the period of review (POR). Therefore, this administrative review covers imports of subject merchandise produced and exported by G Steel, and we are preliminarily rescinding the review with respect to NSM. For a full discussion of the intent to rescind with respect to NSM, see the ''Notice of Intent to Rescind in Part'' section of this notice below. We invite interested parties to comment on these preliminary results. Parties that submit comments are requested to submit with each argument (1) a statement of the issue(s), (2) a brief summary of the argument(s), and (3) a table of authorities.

EFFECTIVE DATE: December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or Stephen Bailey, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3362 or (202) 482–0193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published the antidumping duty order on hot–rolled steel from Thailand. *See Notice of Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products From Thailand*, 66 FR 59562 (November 29, 2001) (*Hot–Rolled Steel Order*). On November 1, 2006, the Department published the opportunity to request administrative review of, *inter alia*, the order on hot–rolled steel from Thailand for the period November 1, 2005, through October 31, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 64240 (November 1, 2006).

In accordance with 19 CFR 351.213(b)(1), on November 28, 2006, petitioner requested that we conduct an administrative review of NSM's sales of subject merchandise. On November 30, 2006, Nucor, a domestic interested party, requested an administrative review of NSM's or NSM's affiliate's sales of subject merchandise, and G Steel requested an administrative review of its sales of subject merchandise. On December 27, 2006, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period November 1, 2005, through October 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 77720 (December 27, 2006).

On January 3, 2007, the Department issued its antidumping duty questionnaire to G Steel and NSM. G Steel submitted its section A questionnaire response (section A response) on February 7, 2007, and its section B and C questionnaire responses on February 21, 2007 (section B&C responses). On January 4, 2007, the Department informed G Steel by telephone that it was not required to submit a Section D response at that time. *See* the Department's Memorandum to the File, dated January 4, 2007. On January 11, 2007, NSM stated in a letter that it did not have any U.S. sales, shipments or entries of subject merchandise during the above–referenced administrative review, and requested that the Department rescind the administrative review with respect to NSM. On March 5, 2007, G Steel submitted additional information in response to section B of the Department's antidumping duty questionnaire with regard to its resale information, and provided its sales reconciliation in the same submission. On April 19, 2007, G Steel submitted its revised sales reconciliation.

On March 26, 2007, petitioner and Nucor requested that the Department initiate a sales–below-cost investigation of home market (HM) sales made by G Steel, which the Department did on May 30, 2007. *See* the Department's Memorandum to the File from Sheikh Hannan, Office of Accounting, and Stephen Bailey and Dena Crossland, Analysts, to Richard Weible, Office Director, regarding Petitioners' Allegation of Sales Below the Cost of Production for G Steel Public Company Limited (Cost Initiation Memorandum), dated May 30, 2007. In the Cost Initiation Memorandum, the Department requested that G Steel respond to section D of the Department's antidumping duty questionnaire.

On June 20, 2007, the Department issued its first sections A through C supplemental questionnaire to G Steel, and received G Steel's response (first sections A through C supplemental response) on July 11, 2007.

On June 27, 2007, in response to the Department's Cost Initiation Memorandum, G Steel submitted its section D questionnaire response.

On August 1, 2007, the Department issued its first section D supplemental questionnaire to G Steel, and received G Steel's response on August 15, 2007 (first section D supplemental response). On August 9, 2007, the Department issued its second sections A through C supplemental questionnaire to G Steel, and received G Steel's response on August 27, 2007 (second sections A through C supplemental response). In the first and second sections A through C supplemental questionnaires, the Department requested information about G Steel's relationship with NSM.[1] On September 19, 2007, the Department issued its second section D supplemental questionnaire to G Steel, and received G Steel's response on October 3, 2007 (second section D supplemental response).

On July 24, 2007, the Department extended the due date for the preliminary results 120 days from August 2, 2007, until November 30, 2007. *See Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 72 FR 40274 (July 24, 2007).

Period of Review

The POR is November 1, 2005, through October 31, 2006.

Scope of the Order

For purposes of this order, the products covered are certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included within the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded.

The following products, by way of example, are outside or specifically excluded from the scope of this order:

-Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).

-Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.

-Ball bearing steels, as defined in the HTSUS.

-Tool steels, as defined in the HTSUS.

-Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

-ASTM specifications A710 and A736.

-USS abrasion–resistant steels (USS AR 400, USS AR 500).

-All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

-Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of

[1] While the Department determines that G Steel and NSM became affiliated at the end of the POR, it does not find that the requirements are met in this review for collapsing the two companies, but may revisit this issue, if necessary, in any subsequent reviews.

articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this order is currently classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90.

Certain hot–rolled carbon steel flat products covered by this order, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.01.80. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and CBP purposes, the written description of the merchandise under review is dispositive.

Notice of Intent To Rescind Review in Part

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. *See, e.g., Stainless Steel Plate in Coils from Taiwan: Notice of Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789, 5790 (February 7, 2002), and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 66 FR 18610, 18611–12 (April 10, 2001). On January 11, 2007, NSM stated in a letter that it did not have any U.S. sales, shipments or entries of subject merchandise during the above–referenced administrative review, and requested that the Department rescind the administrative review with respect to NSM. The Department conducted a U.S. Customs and Border Protection (CBP) data inquiry. CBP only responds to the Department's inquiry when CBP finds that there have been shipments. CBP did not respond to the Department's inquiry, and no party submitted comments. Based on this information, the Department determined that there were no identifiable entries of hot–rolled steel during the POR manufactured or exported by NSM. *See* Memorandum to the File, through Angelica Mendoza, Program Manager, from Dena Crossland: Nakornthai Strip Mill Public Company Limited – No Shipments of Certain Hot–Rolled Carbon Steel Flat Products from Thailand Pursuant to U.S. Customs and Border Protection Inquiry, dated June 6, 2007. Therefore, the Department concludes that during the POR, NSM did not have any entries, exports, or sales of subject merchandise to the United States, and accordingly we are preliminarily rescinding the review with respect to NSM.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.307, we conducted sales and cost verifications of the questionnaire responses of G Steel, using standard verification procedures. Our sales verification results are outlined in the following memorandum: 1) Memorandum to the File, through Angelica Mendoza, Program Manager, and Richard O. Weible, Office Director, regarding the Verification of the Sales Response of G Steel Public Company Limited in the Antidumping Review of Certain Hot–Rolled Carbon Steel Flat Products from Thailand, dated October 15, 2007 (G Steel Sales Verification Report). The Department's cost verification results will be outlined in a forthcoming memorandum. A public version of the G Steel Sales Verification Report is on file in the Department's Central Records Unit (CRU) located in Room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Fair Value Comparisons

To determine whether sales of subject merchandise were made in the United States at less than fair value, we compared the export price (EP) to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated EP and compared these prices to weighted–average normal values or constructed values (CVs), as appropriate.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by G Steel covered by the descriptions in the ''Scope of the Order'' section of this notice to be foreign like products for the purpose of determining appropriate product comparisons to G Steel's U.S. sale of the subject merchandise.

We have relied on the following eleven criteria to match U.S. sales of the subject merchandise to sales in Thailand of the foreign like product: paint, quality, carbon, yield strength, thickness, width, cut–to-length vs. coil, temper rolled, pickled, edge trim, and patterns in relief. We noted at the sales verification that the yield strength data reported in the HM and U.S. sales databases did not accurately reflect the minimum yield strengths for a certain sample of HM and U.S. sales that we examined. *See* G Steel Sales Verification Report, dated October 15, 2007, at page 2. G Steel stated that it reported yield strengths based on a theoretical basis pursuant to the product's specifications. *Id.* at 35. Based on our findings at verification, and in reviewing the record, we find that G Steel's reporting of yield strengths, which it claimed was on a theoretical basis, is not consistent with the minimum yield strength specified by the grade specifications (where applicable). The record shows that G Steel classified yield strength the same for all models, but at verification, we found that the actual yield strength was not the same for all models. Because G Steel's yield strength information could not be verified, the Department determines that the application of partial facts available (FA) within the meaning of 776(a)(2)(D) of the Act is warranted. Additionally, the Department concludes that G Steel did not cooperate to the best of its ability to provide yield strength information, and as such, the Department determines that the use of partial FA with an adverse inference is warranted pursuant to section 776(b) of the Act. *See* the ''Price–to-Price Comparisons'' section below for further discussion.

Export Price

In accordance with section 772 of the Act, we calculate either an EP or a constructed export price (CEP), depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the foreign exporter or producer before the date of importation to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. We have preliminarily determined that G Steel's U.S. sale during the POR was an EP sale.

We calculated EP based on prices charged to the first unaffiliated U.S. customer. We used the contract date as the date of sale.[2] We based EP on the packed prices to the first unaffiliated purchaser outside Thailand. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including foreign inland freight, foreign brokerage and handling, international freight, marine insurance, and U.S. Customs duties.

Normal Value

A. Home Market Viability

To determine whether there is a sufficient volume of sales in the HM to serve as a viable basis for calculating NV, we compared G Steel's volume of HM sales of the foreign like product to the volume of the U.S. sale of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because G Steel's aggregate volume of HM sales of the foreign like product was greater than five percent of its aggregate volume of the U.S. sales for the subject merchandise, we determined the HM was viable. *See* section A response at A–2 through A–3, and exhibit A–1.

B. Arm's–Length Test

G Steel reported that it made sales in the HM to affiliated and unaffiliated customers. G Steel reported downstream sales to certain affiliated customers. *See* G Steel's section A questionnaire response at A–3 and exhibit A–1.

Sales to affiliated customers in the HM for which G Steel did not report a downstream sale that were not made at arm's length were excluded from our analysis. *See* 19 CFR 351.403(c). To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all billing adjustments, movement charges, imputed credit, direct selling expenses, and packing expenses. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings - Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

C. Cost of Production Analysis

On May 30, 2007, after a request from petitioner and Nucor, the Department initiated a sales–below-cost investigation of G Steel because both petitioner and Nucor provided a reasonable basis to believe or suspect that G Steel is selling hot–rolled steel in Thailand at prices below the cost of production (COP). *See* the Department's Cost Initiation Memorandum, dated May 30, 2007. Based on the Department's findings in the Cost Initiation Memorandum, there was a reasonable basis to believe or suspect that G Steel is selling hot–rolled steel in Thailand at prices below COP, and in accordance with section 773(b)(1) of the Act, we examined whether G Steel's sales in the HM were made at prices below the COP.

In accordance with section 773(b)(3) of the Act, we calculated the weighted–average COP for each model based on the sum of G Steel's material and fabrication costs for the foreign like product, plus amounts for selling expenses, general and administrative (G&A) expenses, interest expenses and packing costs.

We relied on the COP information provided by G Steel except for the following adjustments:

1. We recalculated G Steel's skin pass costs (KVOH) to account for the skin passing done at G Steel's own plant during the POR.
2. We recalculated G Steel's scrap offset (TOTSCRAP) based on the net production quantity.
3. We revised G Steel's G&A expense ratio (GNA) by excluding service fees and a reversal of accrued interest.

For further details regarding these adjustments, *see* the Memorandum from Sheikh Hannan to Neal Halper entitled, ''Cost of Production and Constructed Value Adjustments for the Preliminary Results - G Steel Public Limited Company,'' dated November 30, 2007, on file in the Department's CRU.

We compared the weighted–average COP figures to the HM sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below COP. On a product–specific basis, we compared COP to HM prices, less any applicable billing adjustments, movement charges, direct and indirect selling expenses, and packing expenses.

In determining whether to disregard HM sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of G Steel's HM sales of a given model were made at prices below the COP, we did not disregard any below–cost sales of that model because we determined that the below–cost sales were not made within an extended period of time in ''substantial quantities.'' Where 20 percent or more of G Steel's HM sales of a given model were at prices less than COP, we disregarded the below–cost sales because: (1) they were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted–average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for G Steel revealed that for HM sales of certain models, less than 20 percent of the sales of those models were made at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for certain models, more than 20 percent of the HM sales of those models were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below–cost sales from our analysis and used the remaining above–cost sales as the basis for determining NV.

D. Price–to-Price Comparisons and the Use of Partial Facts Available with an Adverse Inference

As stated above in the ''Product Comparisons'' section, we find that pursuant to section 776(b) of the Act, the use of AFA is appropriate because we were unable to verify G Steel's reported yield strength data in either its HM or U.S. sales databases. Further, we find that G Steel did not act to the best of its ability in providing these data. Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by

[2] *See* the Analysis Memorandum for the Preliminary Results of Administrative Review of Certain Hot-Rolled Carbon Steel Flat Products from Thailand: G Steel Public Company Limited, dated November 30, 2007 (Analysis Memo) for a further discussion of this issue.

the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the administrative review. Section 782(e) of the Act states that the Department shall not decline to consider information determined to be ''deficient'' under section 782(d) if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, Vol. 1, at 870 (1994) (SAA), establishes that the Department may employ an adverse inference ''to ensure that the party does not obtain a more favorable result by failing to cooperate to the best of its ability than if it had cooperated fully.''

In sections B and C of the Department's antidumping duty questionnaire, dated January 3, 2007, we requested that G Steel report the yield strengths (STRENGTH/U) in its U.S. and HM databases based on the minimum specified yield strength for the particular specification/grade. Furthermore, we requested that for sales to a particular specification/grade in which there is no minimum specified yield strength, G Steel classify the product in an appropriate yield strength category based on some reasonable methodology incorporating chemistry (*i.e.*, carbon level), heat treatment, *etc.*, and for G Steel to explain the methodology it used. In its section B&C responses, dated February 21, 2007, G Steel stated that it reported yield strength as directed. However, as described above, at verification G Steel could not support or substantiate how it reported the STRENGTH/U data in either the U.S. or HM databases. G Steel classified yield strength the same for all models in its questionnaire responses, but at verification we found that the actual yield strength was not the same for all models. For a detailed discussion with respect to these discrepancies, *see* the Analysis Memo, dated November 30, 2007. Therefore, it was not possible to verify all of the product characteristic information that we had identified as part of our examination in the verification agenda, dated August 28, 2007. Accordingly, pursuant to section 776(a)(2)(D) of the Act, partial FA is justified.

As noted above, section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. A showing of bad faith is not required for imposition of an adverse inference. Rather, the question is whether the respondent put forth its maximum effort to produce the information requested. Inattentiveness or carelessness can be a basis for use of an adverse inference. *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

G Steel had the documents necessary to report complete and correct information in the necessary and requested manner and format. We find that G Steel did not put forth its maximum efforts in reporting yield strength. Rather, it simply classified all yield strengths the same. Accordingly, we find that G Steel did not act to the best of its ability in reporting necessary and accurate information. Therefore, we find it appropriate to use an inference that is adverse to G Steel's interest in selecting from among the facts otherwise available. Further, section 782(d) of the Act is inapplicable here because this is a situation where the respondent's information could not be verified. We did not discover the deficient response until verification. Moreover, G Steel did not meet all the criteria of section 782(e) of the Act.

As AFA, we matched net U.S. price to the highest individual HM NV with the most similar control number (CONNUM) to the U.S. sale. We calculated NV based on prices to unaffiliated customers and affiliated customers that passed the arm's–length test. We adjusted U.S. gross unit price for billing adjustments. We made deductions, where appropriate, for foreign inland freight and international freight pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) as appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. Finally, we deducted the HM packing cost and added the U.S. packing cost in accordance with sections 773(a)(6)(A) and (B) of the Act.

For a detailed analysis of the Department's application of AFA, see the Analysis Memo, dated November 30, 2007.

E. Price–to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a contemporaneous comparison market match for the U.S. sale. We calculated CV based on the cost of materials and fabrication employed in producing the subject merchandise, SG&A expenses, interest expense and profit. We made the same adjustments to CV as outlined in the ''Cost of Production Analysis'' section above. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses, interest and profit on the amounts G Steel incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Thailand. For selling expenses, we used the weighted–average HM selling expenses. Where appropriate, we made COS adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction or CEP transaction. *See also* 19 CFR 351.412. The LOT in the comparison market is the LOT of the starting–price sales in the comparison market or, when NV is based on CV, the LOT of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also that of the starting–price sale, which is usually from the exporter to the importer. For CEP, the LOT is that of the constructed sale from the exporter to the importer. As noted in the ''Export Price'' section above, we preliminarily find that G Steel's U.S. sale to an unaffiliated U.S. customer is appropriately classified as an EP sale.

To determine whether comparison market sales are at a different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT than EP sales, and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which NV is based and comparison market sales at the LOT of the export transaction, where possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In analyzing the differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 6.

To determine whether the comparison market sales were at different stages in the marketing process than the U.S. sale, we reviewed the channels of distribution in each market, including selling functions, class of customer (''customer category''), and the level of selling expenses for each type of sale. In this review, we obtained information from G Steel regarding the marketing stages involved in sales to the reported home and U.S. markets. G Steel reported one LOT with two channels of distribution in the HM: (1) sales to affiliated and unaffiliated trading companies and (2) sales to unaffiliated end users. *See* G Steel's section A questionnaire response at A–17.

We examined the selling activities reported for each channel of distribution in the HM and we organized the reported selling activities into the following four selling functions: sales process and marketing support, freight and delivery, inventory maintenance and warehousing, and warranty and technical services. We found that G Steel's level of selling functions to its HM customers for each of the four selling functions did not vary significantly by channel of distribution. *See* G Steel's section A questionnaire response at exhibit A–6. For example, G Steel provides similar levels of marketing and technical services to trading companies and end users. Because channels of distribution do not qualify as separate LOTs when the selling functions performed for each customer class or channel are sufficiently similar, we determined that one LOT exists for G Steel's HM sales.

In the U.S. market, G Steel made sales of subject merchandise through one channel of distribution and it claimed only one LOT for its sales in the United States. *See* G Steel's section A questionnaire response at A–15 through A–16, and exhibit A–6. The U.S. sale was an EP transaction between G Steel and an unaffiliated U.S. trading company. *Id.* Therefore, we preliminary determine that G Steel's U.S. sale constitutes a single LOT.

We then compared the selling functions performed by G Steel on its EP sale to the selling functions provided in the HM. We found that G Steel provides significant selling activities in the HM related to the sales process and marketing support selling functions, as well as warranty and technical service selling functions, which it does not provide for the U.S. market customer. For instance, G Steel stated that it regularly undertakes sales forecasting and market research for the HM, but there was no sales forecasting or marketing research done for the U.S. market during the POR. *See* section A response at A–19 and A–21. G Steel further stated that it provided technical assistance to HM customers, but did not provide technical assistance (and there were no warranty claims submitted) for U.S. sales during the POR. *Id.* at A–21 and A–22.

Based upon our analysis, we preliminarily determine that the EP and the starting price of HM sales differ significantly with respect to sales process and marketing support selling functions (*e.g.* sales forecasting and market research), as well as warranty and technical service selling functions, and are thus at different LOTs. Therefore, when we compared the EP sale to the comparison market sales, we examined whether an LOT adjustment may be appropriate. In this case, because G Steel sold at one LOT in the HM, there is no basis upon which to determine whether there is a pattern of consistent price differences between LOTs. Further, we do not have the information which would allow us to examine the price patterns of G Steel's sales of other similar products, and there is no other record evidence upon which a LOT adjustment could be based. Therefore, no LOT adjustment was made.

Currency Conversion

We made currency conversions pursuant to 19 CFR 351.415 based on the exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted–average dumping margin for the period November 1, 2005, through October 31, 2006, to be as follows:

Manufacturer / Exporter	Margin (percent)
G Steel Public Co., Ltd.	0.00

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of issuance of the Memorandum to the File, through Peter Scholl, Lead Accountant, and Neal Halper, Office Director, Verification of the Cost Response of G Steel Public Company Limited (G Steel Cost Verification Report). *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of issuance of the G Steel Cost Verification Report. *See* 19 CFR 351.309(d). Parties who submit argument in these proceedings are requested to submit with the argument: 1) a statement of the issues, 2) a brief summary of the argument, and (3) a table of authorities. *See* 19 CFR 351.309(c). An interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). The Department will issue the final results of this administrative review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of this review the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by G Steel or by any of the companies for which we are rescinding this review, and for which G Steel or each no–shipment respondent did not know its merchandise would be exported by another company to the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate listed in the final results of review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the all–others rate of 3.86 percent, which is the all–others rate established in the LTFV investigation. *See Hot Rolled Steel Order*, 66 FR 59562 (November 29, 2001). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 30, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–23806 Filed 12–6–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Certain Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 6, 2007, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and an examination of our calculations, we have made certain changes for the final results. The final weighted-average dumping margin for Far Eastern Textile Limited is listed below in the ''Final Results of the Review'' section of this notice.

DATES: *Effective Dates:* December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Devta Ohri or Brandon Farlander, Office 1, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3853 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2007, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the sixth administrative review of the antidumping duty order on certain polyester staple fiber (''PSF'') from Taiwan. *See Certain Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review,* 72 FR 31283 (June 6, 2007). We invited interested parties to comment on the preliminary results.

On October 24, 2007, we received case briefs from Wellman, Inc. and Invista, S.a.r.l. (collectively, ''the petitioners''), and Far Eastern Textile Limited (''FET'' or ''respondent''). On November 6, 2007, we received rebuttal briefs from the FET and Fibertex Corporation (''Fibertex'' or ''importer''), an importer of subject merchandise.

Period of Review

The period of review (''POR'') is May 1, 2005, through April 30, 2006.

Scope of the Order

For the purposes of this order, the product covered is certain polyester staple fiber (''PSF''). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 5503.20.00.25 [1] is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from this order. Low-melt

[1] The most current edition of the Harmonized Tariff Schedule of the United States (2006)—Supplement 1 (Rev 1) (August 1, 2006) incorporates the revision of HTSUS number 5503.20.00.20 to 5503.20.00.25.

PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the December 3, 2007, ''Issues and Decision Memorandum for the Sixth Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from Taiwan'' (''Decision Memorandum''), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, Room B–099 of the main Department building (''CRU''). In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://www.ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Fair Value Comparisons

To determine whether FET's sales of PSF to the United States were made at less than normal value (''NV''), we compared export price (''EP'') to the NV. We calculated EP, NV, constructed value (''CV''), and the cost of production (''COP''), based on the same methodologies used in the preliminary results, except that we did not weight-average FET's raw material costs for the final results.

Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. The sales were made within an extended period of time in accordance with section 773(b)(2)(B) of the Act, because we examined below-cost sales occurring during the entire POR. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of the respondent's home market sales were at prices less than the COP and, thus, the below-cost sales were made within an extended period of time and in substantial quantities. In addition, these sales were made at prices that did not permit the recovery of costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Final Results of the Review

We find that the following dumping margin exists for the period May 1, 2005, through April 30, 2006:

Exporter/manufacturer	Weighted-average margin percentage
Far Eastern Textile Limited.	0.30 (*de minimis*).

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries.

FET has indicated that it was not the importer of record for any of its sales to the United States during the POR. FET reported the name of its U.S. customer as the importer of record for all U.S. sales. As such, FET did not report the entered value for any of its U.S. sales. Accordingly, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on the estimated entered value.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue assessment instructions directly to CBP 15 days after publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements are effective for all shipments of PSF from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above (except no cash deposit will be required if its weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation, the cash deposit rate will continue to be the most recent rate published in the final determination for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 7.31 percent, the ''all others'' rate established in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan,* 65 FR 33807 (May 25, 2000). These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 3, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Appendix I

List of Comments in the *Decision Memorandum*

Comment 1: Application of Total Adverse Facts Available.

Comment 2: Fluctuating Monthly Costs.

[FR Doc. E7–23815 Filed 12–6–07; 8:45 am]

BILLING CODE 3510–DS–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Senior Corps Grant Application (424–NSSC)—reference OMB Control Number 3045–0035, with an expiration date of April 30, 2008. The Corporation proposes to renew the Senior Corps Grant Application without significant changes. The modifications proposed by the Corporation for this renewal are limited to language changes to the application instructions:

- Remove the term ''non-impact'' work plan and replace with ''work plan'' to clarify and simplify for applicants;
- Update the ''Required Documents'' list to specify that applicants send the 990 Financial Form in the event that the organization does not meet the threshold for an A–133 audit.

Copies of the information collection can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 5, 2008.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Senior Corps; Attention Ms. Angela Roberts, Associate Director, Room 9401; 1201 New York Avenue, NW., Washington, DC 20525. (2) By hand delivery or by courier to the Corporation's mailroom on the 8th Floor at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. (3) By fax to: (202) 606–3475, Attention Ms. Angela Roberts, Associate Director. (4) Electronically through the Corporation's e-mail address system: *aroberts@cns.gov*.

FOR FURTHER INFORMATION CONTACT: Angela Roberts, (202) 606–6822 or by e-mail at *aroberts@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background: The Senior Corps Grant Application is completed by applicant organizations interested in sponsoring a Senior Corps program. The application is completed electronically using the Corporation's Web-based grants management system, eGrants.

Current Action: The Corporation seeks to renew the current application without significant change. Revisions are limited to minor language changes in the Application Instructions to facilitate ease of use by applicants. The current application is due to expire on April 30, 2008.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: National Senior Service Corps Grant Application.

OMB Number: 3045–0035.

Agency Number: SF 424–NSSC.

Affected Public: Current and prospective sponsors of National Senior Service Corps Grants.

Total Respondents: 1,350.

Frequency: Annually, with exceptions.

Average Time Per Response: Averages 13.2 hours. Estimated at 16.5 hours for first time respondents; 15 hours for continuation sponsors; 5 hours for revisions.

Estimated Total Burden Hours: 17,820 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $6,497.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 30, 2007.

Tess Scannell,

Director, Senior Corps.

[FR Doc. E7–23793 Filed 12–6–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Federal Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it will renew the charter for the Board of Visitors National Defense Intelligence College.

The purpose of the Board of Visitors for the National Defense Intelligence College (hereafter referred to as the Board of Visitors) is to provide the Secretary of Defense independent advice on matters relating to the mission of the National Defense Intelligence College. The Director, Defense Intelligence Agency may act upon the Board of Visitor's advice and recommendations

The Board of Visitors shall be comprised of no more than twelve members, and the Department of Defense, to achieve a balanced membership, will include a cross-section of experts and eminent authorities in the fields of national intelligence, defense and academia.

The Secretary of Defense approves the appointment of the members, and those who are not full-time Federal officers or employees are appointed as Special Government Employees under the authority of 5 U.S.C. 3109. With the exception of travel and per diem for official travel, the members shall server without compensation. The Director, Defense Intelligence Agency shall select the committee's chairperson from the Board of Visitors at large.

The Board of Visitors shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and other appropriate Federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered committee, and shall report all their recommendations and advice to the Board of Visitors for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Department of Defense or any Federal officers or employees who are not members of the Board of Visitors.

SUPPLEMENTARY INFORMATION: The Board of Visitors shall meet at the call of the committee's Designated Federal Officer, in consultation with the Chairperson and the Director, Defense Intelligence Agency. The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Board of Visitors National Defense Intelligence College membership about the Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board of Visitors National Defense Intelligence College.

All written statements shall be submitted to the Designated Federal Officer for the Board of Visitors National Defense Intelligence College, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board of Visitors National Defense Intelligence College's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board of Visitors National Defense Intelligence College. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Committee Management Office, 703–601–2554, extension 128.

Dated: November 30, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–23765 Filed 12–6–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The Department of Defense announces DoD Advisory Group on Electron Devices (AGED) closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, January 9, 2008.

ADDRESSES: The meeting will be held at the QNA, 4100 N. Fairfax Drive, Suite 800, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Aimee Steussy, QNA, 4100 N. Fairfax Drive, Suite 800, Arlington, VA 22203, 703–284–8357.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development efforts in electronics and photonics with a focus on benefits to national defense. These reviews may form the basis for research and development programs initiated by the Military Departments and Defense Agencies to be conducted by industry, universities or in government laboratories. The agenda for this meeting will include programs on molecular electronics, microelectronics, electro-optics, and electronic materials.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 2), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: November 30, 2007.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–23764 Filed 12–6–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Material Inspection and Receiving Report (OMB Control Number 0704–0248)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through March 31, 2008. DoD proposes that OMB extend its approval for use for three additional years.

DATES: DoD will consider all comments received by February 5, 2008.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0248, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0248 in the subject line of the message.
- *Fax:* 703–602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Dustin Pitsch, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Pitsch, 703–602–8387. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.* Paper copies are available from Mr. Dustin Pitsch, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Appendix F, Material Inspection and Receiving Report; DD Form 250, DD Form 250c, DD Form 250–1; OMB Control Number 0704–0248.

Needs and Uses: Collection of this information is necessary to process the shipping and receipt of materials and payment to contractors under DoD contracts.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 153,800.

Number of Respondents: 17,120.

Responses per Respondent: 217.

Annual Responses: 3,720,000.

Average Burden per Response: Approximately 2.5 minutes.

Frequency: On occasion.

Summary of Information Collection

This information collection includes the requirements of DFARS Appendix F, Material Inspection and Receiving Report; the related clause at DFARS 252.246–7000, Material Inspection and Receiving Report; and DD Forms 250, 250c, and 250–1. The clause at DFARS 252.246–7000 is used in contracts that require separate and distinct deliverables. The clause requires the contractor to prepare and furnish to the Government a material inspection and receiving report (DD Form 250) in a manner and to the extent required by DFARS Appendix F. The information in the report is required for material inspection and acceptance, shipping, and payment. The contractor may submit the information by using the Wide Area WorkFlow-Receipt and Acceptance electronic form.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E7–23656 Filed 12–6–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 5, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the

Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 3, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: 2004/09 Beginning Postsecondary Students Longitudinal Study (BPS:04/09).

Frequency: On Occasion.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,000.

Burden Hours: 383.

Abstract: The 2004/06 Beginning Postsecondary Students Longitudinal Study (BPS:04/09) is being conducted to continue the series of longitudinal data collection efforts started in 1990 with the National Postsecondary Students Aid Study to enhance knowledge concerning progress and persistence in postsecondary education for new entrants. The study will address issues such as progress, persistence, and completion of postsecondary education programs, entry into the workforce, the relationship between experiences during postsecondary education and various societal and personal outcomes, and returns to the individual and to society on the investment in postsecondary education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3527. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–23811 Filed 12–6–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Grants for the Integration of Schools and Mental Health Systems; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215M.

DATES:

Applications Available: December 7, 2007.

Deadline for Transmittal of Applications: January 30, 2008.

Deadline for Intergovernmental Review: March 31, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Grants for the Integration of Schools and Mental Health Systems will provide funds to increase student access to high-quality mental health care by developing innovative approaches that link school systems with the local mental health system.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 5541 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7269).

Absolute Priority: For FY 2008 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Increasing student access to quality mental health care by developing innovative approaches to link local school systems with the local mental health system. A program funded under this absolute priority must include all of the following activities:

(1) Enhancing, improving, or developing collaborative efforts between school-based service systems and mental health service systems to provide, enhance, or improve prevention, diagnosis, and treatment services to students.

(2) Enhancing the availability of crisis intervention services, appropriate referrals for students potentially in need of mental health services, and ongoing mental health services.

(3) Providing training for the school personnel and mental health professionals who will participate in the program.

(4) Providing technical assistance and consultation to school systems and mental health agencies and families participating in the program.

(5) Providing linguistically appropriate and culturally competent services.

(6) Evaluating the effectiveness of the program in increasing student access to quality mental health services, and making recommendations to the Secretary about sustainability of the program.

Additional Requirements: The following requirements are from the notice of final requirements for this program, published in the **Federal Register** on May 30, 2006 (71 FR 30778).

Requirement 1—Coordination of Activities

Recipients of a grant under the Grants for the Integration of Schools and Mental Health Systems program are required to coordinate project activities with projects funded under the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration's Mental Health Transformation State Infrastructure Grants (MHTSIG) program (CFDA 93.243), if a grantee's State receives a MHTSIG award. If a recipient of a grant under the Grants for the Integration of Schools and Mental Health Systems program has received or receives a grant under the Department of Education's Emergency Response and Crisis Management program, now known as the Readiness and Emergency Management for Schools (REMS) grant competition (CFDA 84.184E), the recipient must coordinate mental health service activities under this grant with those planned under its REMS grant. Projects funded by this program must complement, rather than duplicate, existing or ongoing efforts.

Requirement 2—Safe Schools/Healthy Students Recipients Excluded From Receiving Awards

Former or current recipients under the Safe Schools/Healthy Students program (CFDA 84.184L) are not eligible to receive a Grant for the Integration of Schools and Mental Health Systems. Recipients of Safe Schools/Healthy Students awards are responsible for completing a scope of work under that program that is very similar to the activities required under the Grants for the Integration of Schools and Mental Health Systems program. By restricting the applicant pool to eliminate former or current grantees under the Safe Schools/Healthy Students program, we will be able to focus Federal funds on entities that have not yet received Federal support to develop and implement strong linkages with other entities in their communities for the provision of mental health services to students.

Applicants may compete for both the Grants for the Integration of Schools and Mental Health Systems and Safe Schools/Healthy Students programs in the same year; if applicants are deemed eligible for funding in both grant competitions, the applicant will receive the larger and more comprehensive of the awards.

Requirement 3—Preliminary Interagency Agreement

Applicants for an award under the Grants for the Integration of Schools and Mental Health Systems program must develop and submit with their applications a preliminary interagency agreement (IAA). The IAA must contain the signatures of an authorized representative of at least (1) one or more State or local educational agencies or Indian tribes; (2) one or more juvenile justice authorities; and (3) one or more State or local public mental health agencies. This preliminary IAA would confirm the commitment of these partners to complete the work under the proposed project, if funded. If the applicant is funded, recipients will complete a final IAA as required by section 5541(e) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The final IAA must be completed and submitted to us, signed by all parties, no later than 12 months after the award date.

Applications that do not include the proposed preliminary IAA with all of the required signatures will be rejected and not be considered for funding.

Requirement 4—Inclusion of Parental Consent Considerations in Final IAA

The final Interagency Agreement (IAA) must include a description of policies and procedures that would ensure appropriate parental or caregiver consent for any planned services, pursuant to State or local laws or other requirements.

Requirement 5—Provision of Direct Services

Grant funds under this program must not be used to provide direct services to students.

Program Authority: 20 U.S.C. 7269.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299. (b) The notice of final requirements for this program published in the **Federal Register** on May 30, 2006 (71 FR 30778).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration's budget request for FY 2008 does not include funds for this program. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2008 and in FY 2009 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $150,000–$350,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 19.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies, local educational agencies (LEAs), including charter schools that are considered LEAs under State law, and Indian tribes. Additional eligibility requirements are listed elsewhere in this notice under section I. Funding Opportunity Description, *Additional Requirements*.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements in accordance with section 5541(i) of the ESEA.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/programs/mentalhealth/applicant.html*. To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.215M.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:*

Applications Available: December 7, 2007.

Deadline for Transmittal of Applications: January 30, 2008.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: March 31, 2008.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* Grant funds under this program must not be used to provide direct services to students or families. We reference additional regulations outlining funding

restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The Grants for the Integration of Schools and Mental Health Systems, 84.215M, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Grants for the Integration of Schools and Mental Health Systems at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.215, not 84.215M).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf).* You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215M), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.215M), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215M), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are the equitable distribution of grants among the geographical regions of the United States and among urban, suburban, and rural populations.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. You must also submit an interim progress report twelve months after the award date. This report should provide the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Grants for the Integration of Schools and Mental Health Systems program:

a. The percentage of schools served by the grant that have comprehensive, detailed linkage protocols in place; and

b. The percentage of school personnel served by the grant who are trained to make appropriate referrals to mental health services.

These two measures constitute the Department's measures of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these two measures in conceptualizing the approach and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their performance and final reports about progress toward these measures. The Secretary will also use this information to respond to the evaluation requirements concerning this program established in section 5541(f) of the ESEA. For specific requirements on grantee reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Dana Carr, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E332, FB6, Washington, DC 20202. Telephone: (202) 260–0823 or by e-mail: *dana.carr@ed.gov*.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: November 30, 2007.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E7–23749 Filed 12–6–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. 2007–OE–01, Mid-Atlantic Area National Interest Electric Transmission Corridor; Docket No. 2007–OE–02, Southwest Area National Interest Electric Transmission Corridor]

National Interest Electric Transmission Corridor Designation Orders

AGENCY: Office of Electricity Delivery and Energy Reliability (DOE).

ACTION: Notice of orders granting rehearing.

SUMMARY: The Department of Energy (DOE) is granting rehearing to all timely-filed requests for rehearing by parties to the proceedings for designating the Mid-Atlantic Area National Electric Transmission Corridor (Docket No. 2007–OE–01) and the Southwest Area National Electric Transmission Corridor (Docket No. 2007–OE–02) for the limited purpose of further consideration of the requests.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to David Meyer, DOE Office of Electricity Delivery and Energy Reliability, (202) 586–1411, *david.meyer@hq.doe.gov*. For legal information, contact Lot Cooke, DOE Office of the General Counsel, (202) 586–0503, *lot.cooke@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On October 5, 2007 (72 FR 56992), DOE issued a National Electric Transmission Congestion Report and Order in which it designated the Mid-Atlantic Area National Interest Electric Transmission Corridor (Docket No. 2007–OE–01) and the Southwest Area National Interest Electric Transmission Corridor (Docket No. 2007–OE–02). DOE received and is considering numerous requests for rehearing. This Notice contains two orders issued in Washington, DC, on December 3, 2007, granting rehearing to all timely-filed requests for rehearing in the above dockets for the limited purpose of further consideration.

Patricia A. Hoffman,

Principal Deputy Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

United States of America; Department of Energy

Mid-Atlantic Area National Interest Electric Transmission Corridor

[Docket No. 2007–OE–01]

Order Granting Rehearing for Further Consideration

The Department of Energy (DOE) issued a National Electric Transmission Congestion Report and Order in the above docket in which it designated the Mid-Atlantic Area National Interest Electric Transmission Corridor (72 FR 56992, Oct. 5, 2007).

Rehearing has been timely requested of DOE's Report and Order. In order to afford additional time for consideration of the matters raised in the rehearing requests, rehearing of DOE's Report and Order is hereby granted to all timely-filed requests for rehearing by parties to the above docket for the limited purpose of further consideration. All rehearing requests filed in the above docket will be addressed in a future order or orders. As provided in Ordering Paragraph E of the Report and Order, DOE will not accept responses to requests for rehearing.

Patricia A. Hoffman,

Principal Deputy Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

United States of America, Department of Energy

Southwest Area National Interest, Electric Transmission Corridor

[Docket No. 2007–OE–02]

Order Granting Rehearing for Further Consideration

The Department of Energy (DOE) issued a National Electric Transmission Congestion Report and Order in the above docket in which it designated the Southwest Area National Interest Electric Transmission Corridor (72 FR 56992, Oct. 5, 2007).

Rehearing has been timely requested of DOE's Report and Order. In order to afford additional time for consideration of the matters raised in the rehearing requests, rehearing of DOE's Report and Order is hereby granted to all timely-filed requests for rehearing by parties to the above docket for the limited purpose of further consideration. All rehearing requests filed in the above docket will be addressed in a future order or orders. As provided in Ordering Paragraph E of the Report and Order, DOE will not accept responses to requests for rehearing.

Patricia A. Hoffman,

Principal Deputy Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E7–23809 Filed 12–6–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES07–66–002]

Allegheny Generating Company; Notice of Compliance Filing

November 30, 2007.

Take notice that on November 29, 2007, Allegheny Generating Company tendered for filing a supplement to Exhibit B of its application as requested by the Commission on November 14, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 10, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23775 Filed 12–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Institution of Proceeding and Refund Effective Date

December 3, 2007.

Ameren Services Company Northern Indiana Public Service Company v. Midwest Independent Transmission System Operator, Inc.	Docket No. EL07–86–000.
Great Lakes Utilities Indiana Municipal Power Agency Missouri Joint Municipal Electric Utility Commission Prairie Power, Inc Southern Minnesota Municipal Power Agency Wisconsin Public Power Inc. v. Midwest Independent Transmission System Operator, Inc.	Docket No. EL07–88–000.
Wabash Valley Power Association, Inc. v. Midwest Independent Transmission System Operator, Inc.	Docket No. EL07–92–000.

On November 28, 2007, the Commission issued an order that instituted a proceeding in the above-referenced dockets, pursuant to Section 206 of the Federal Power Act (FPA) 16 U.S.C. 824e, to review evidence and to establish a just and reasonable Revenue Sufficiency Guarantee cost allocation methodology for market participants under the Midwest Independent Transmission System Operator, Inc.'s Open Access Transmission and Energy Markets Tariff. *Ameren Service Company, et al.*, 121 FERC ¶ 61,205 (2007).

The refund effective date in the above-docketed proceeding, established pursuant to section 206(b) of the FPA, is August 10, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23767 Filed 12–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–61–001]

ISO New England, Inc.; Notice of Filing

November 30, 2007.

Take notice that on November 28, 2007, ISO New England Inc. tendered for filing responses to the Commission's deficiency letter issued on November 16, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 7, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23774 Filed 12–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–1244–001]

NorthPoint Energy Solutions, Inc.; Notice of Filing

November 30, 2007.

Take notice that on November 28, 2007, NorthPoint Energy Solutions, Inc. tendered for filing an amendment to their October 22, 2007 amended market-based rate tariff filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 19, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23773 Filed 12–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2686–054]

Duke Energy Carolinas, LLC; Notice of Availability of Environmental Assessment

November 30, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879) the Office of Energy Projects has prepared an environmental assessment (EA) for an application filed by Duke Energy Carolinas, LLC (licensee) on January 16, 2007, requesting Commission approval of a non-project use of project lands. The licensee requests permission to grant to The Point at Lake Glenville (The Point) a lease for 0.55 acre of project land and permission to install a private cluster dock with a capacity of 10 watercraft at the Westfork Hydroelectric Project (FERC No. 2686). The project is located on the West Fork of the Tuckasegee River near the town of Cashiers in Jackson County, North Carolina. The project does not occupy any federal lands.

The EA evaluates the environmental impacts that would result from approving the licensee's proposal to grant The Point a lease and permission to replace an existing 5-slip private cluster dock with the proposed 10-slip private cluster dock. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–2686) excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed by January 2, 2008 and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please reference the project name and project number (P–2686) on all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact Chris Yeakel at (202) 502–8132.

Kimberly D. Bose,
Secretary.

[FR Doc. E7–23781 Filed 12–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 618–170]

Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 30, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Temporary Variance of Minimum Flow Requirement.

b. *Project No.:* 618–170.

c. *Date Filed:* November 26, 2007.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Jordan Dam.

f. *Location:* On the Coosa River, in Elmore, Chilton, and Coosa Counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Barry Lovett, Alabama Power Company, 600 N.18th Street, P.O. Box 2641, Birmingham, AL 35291, (205) 257–1258.

i. *FERC Contact:* Peter Yarrington, *peter.yarrington@ferc.gov*, (202) 502–6129.

j. *Deadline for filing comments, motions to intervene and protests:* December 17, 2007.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The Alabama Power Company (APC) is requesting a 90-day variance of the Jordan Dam Project's minimum flow requirements due to continuing drought conditions in the Southeast, and to allow continuation of a study of the effects of minimum flow reductions on aquatic resources, including the federally endangered Tulotoma snail, *Tulotoma magnifica*. Drought conditions in the Coosa River Basin continue to be rated ''exceptional,'' the most severe category recognized by the U.S. Drought Monitoring Program. The project license requires a flow release of 2,000 cfs July 1 through March 31. The licensee proposes to provide a flow of 1,600 cfs (+/−5%) at Jordan Dam during the 90-day variance, to begin December 2, 2007.

l. *Location of the Application:* The filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426 or by calling (202) 502–8371, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docsfiling/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*; for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(I)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23772 Filed 12–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12918–000]

FFP Project 29, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 30, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12918–000.

c. *Date filed:* August 6, 2007.

d. *Applicant:* FFP Project 29, LLC.

e. *Name of Project:* Sara Bend Project.

f. *Location:* The project would be located in a section of the Mississippi River in West Feliciana Parish and Pointe Coupee Parish, Louisiana. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Daniel Irvin, FFP Project 29, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536, and Ms. Maureen Winters, Project Manager, Devine Tarbell & Associates, 970 Baxter Boulevard, Portland, ME 04103, phone (207) 775–4495.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12918–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 2,000 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 40 megawatts, (2) a proposed transmission line, (3) a mooring system comprised of either free standing pilings or existing infrastructure which will anchor the units, and (4) appurtenant facilities. The FFP Project 29, LLC, project would have an average annual generation of 175.200 gigawatt-hours and be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23777 Filed 12–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12925–000]

FFP Project 39, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 30, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12925–000.

c. *Date filed:* August 6, 2007.

d. *Applicant:* FFP Project 39, LLC.

e. *Name of Project:* Malone Field Light Project.

f. *Location:* The project would be located in a section of the Mississippi River in Bolivar County, Mississippi and Desha County, Arkansas. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contacts: Mr. Daniel Irvin, FFP Project 39, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536, and Ms. Maureen Winters, Project Manager, Devine Tarbell & Associates, 970 Baxter Boulevard, Portland, ME 04103, phone (207) 775–4495.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12925–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 4,400 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 88 megawatts, (2) a proposed transmission line, (3) a mooring system comprised of either free standing pilings or existing infrastructure which will anchor the units, and (4) appurtenant facilities. The FFP Project 39, LLC, project would have an average annual generation of 385.440 gigawatt-hours and be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23778 Filed 12–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12926–000]

FFP Project 38, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 30, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12926–000.

c. *Date filed:* August 6, 2007.

d. *Applicant:* FFP Project 38, LLC.

e. *Name of Project:* Walker Bend Project.

f. *Location:* The project would be located in a section of the Mississippi River in Washington County, Mississippi and Chicot County, Arkansas. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Daniel Irvin, FFP Project 38, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536, and Ms. Maureen Winters, Project Manager, Devine Tarbell & Associates, 970 Baxter Boulevard, Portland, ME 04103, phone (207) 775–4495.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12926–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 2,400 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 48 megawatts, (2) a proposed transmission line, (3) a mooring system comprised of either free standing pilings or existing infrastructure which will anchor the units, and (4) appurtenant facilities. The FFP Project 38, LLC, project would have an average annual generation of 210.240 gigawatt-hours and be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23779 Filed 12–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13049–000]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 30, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13049–000.

c. *Date filed:* October 5, 2007.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Rock Creek Dam Streamflow Incremental Generation Project

f. *Location:* The project would be located in the North Fork Feather River upstream of Lake Oroville, near the towns of Belden, Tobin, and Storrie, in Plumas County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Alan Soneda, Pacific Gas and Electric Company, 245 Market Street, MS N11E, P.O. Box 770000, San Francisco, CA 94177–0001, phone (415)–973–4054.

i. *FERC Contact:* Sonali Dohale, (202) 502–6444.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would develop incremental capacity at PG&E's licensed Project No. 1962, and consist of a proposed powerhouse with a turbine and generator to be constructed on the right (west) abutment at the downstream side of the existing Rock Creek Dam. The existing Rock Creek Dam is one of two dams comprising the existing Rock Creek-Cresta Project No. 1962, which has a generating capacity of 182 MW. The proposed project will be run-of-river; the required minimum instream flow downstream of Rock Creek Dam will be passed through the proposed powerhouse without change in volume or timing. The estimated average annual energy production and estimated capacity of the new unit are 23.1 GWH and 3.6 MW, respectively.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23780 Filed 12–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12607–001]

Town of Massena; Notice of Dispute Resolution Panel Meeting and Technical Conference

November 30, 2007.

On November 26, 2007, Commission staff, in response to the filing of a notice of study dispute by the New York State Department of Environmental Conservation on November 8, 2007, convened two three-person Dispute Resolution Panels pursuant to 18 CFR 5.14(d).

The Panels will hold a two-session technical conference at the times and place noted below. The morning session (Session 1) will address study disputes regarding impacts related to floodplain, ice management, municipal combined sewer overflows and infrastructure. The afternoon session (Session 2) will address study disputes regarding sampling for sturgeon movement and spawning and the Phase II ASTM environmental site assessment. The focus of the technical session is for the disputing agency, applicant, and Commission to provide the Panels with additional information necessary to evaluate the disputed studies. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to attend the meeting as observers. The Panels may also request information or clarification on written submissions as necessary to understand the matters in dispute. The Panels will limit all input that it receives to the specific studies or information in dispute and will focus on the applicability of such studies or information to the study criteria stipulated in 18 CFR 5.9(b). If the number of participants wishing to speak creates time constraints, the Panels may, at their discretion, limit the speaking time for each participant.

Technical Conference

Date: December 12, 2007.

Session 1: 9 a.m.–11:30 a.m. (EST).

Session 2: 1 p.m.–4 p.m.

Place: Doubletree Hotel Syracuse, 6301 State Route 298, East Syracuse, New York 13057.

Phone: 315–432–0200.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E7–23751 Filed 12–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Second Notice of Technical Conference

November 30, 2007.

Interconnection Queuing Practices .... Docket No. AD08–2–000

Midwest Independent Transmission System Operator	Docket No. ER07–1375–000
Midwest Independent Transmission System Operator	Docket No. ER07–970–000
Southwest Power Pool	Docket No. ER07–1311–000
PacifiCorp	Docket No. OA07–54–000
United States Department of Energy Bonneville Power Administration.	Docket No. NJ08–2–000

As announced in the ''Notice of Technical Conference'' issued on November 2, 2007, a technical conference will be held on Tuesday, December 11, 2007 from 9:30 a.m. to approximately 4:30 p.m. (EST) (changed from the starting and closing times listed in the previous notice), in the Commission Meeting Room of the Federal Energy Regulatory Commission (FERC) at 888 First Street, NE., Washington, DC 20426. Commissioners will be attending this conference.

The Commission issued Order No. 2003 to standardize the agreements and procedures related to the interconnection of large generating facilities.[1] The Commission found that ''[a] standard set of procedures as part of the OATT for all jurisdictional transmission facilities will minimize opportunities for undue discrimination and expedite the development of new generation, while protecting reliability and ensuring that rates are just and reasonable.'' [2] Key to appropriately balancing these goals was a set of comprehensive queue management procedures. However, some regions are experiencing various issues in attempting to manage their queues. Surges in the volume of new generation development are taxing the current queue management approach for interconnections in some regions. Comparable issues have arisen in the transmission service queues for similar reasons. Additionally, the unprecedented demand in some regions for new types of generation, principally renewable generation, places further stress on the current queue management approach because such generation technologies can, for example, be brought online more quickly than traditional generation. Finally, some regions have implemented new capacity markets that did not exist when the current queue management approach was developed and are struggling with how to adjust queue management to accommodate those new markets.

The purpose of this conference is to discuss possible methods to address the current challenges of queue management while still honoring the Order No. 2003 goals described above. Panelists should identify the steps and timeframes necessary to implement specific proposals. The agenda for the conference is attached.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. Additionally, a free webcast of this event will be available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For further information about the conference, please contact: Sarah McKinley, Office of External Affairs, (202) 502–8368, *sarah.mckinley@ferc.gov*; or Mary Morton, Energy Innovations Sector, Office of Energy Markets and Regulation, (202) 502–8040, *mary.morton@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23782 Filed 12–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Southwest Power Pool Independent Coordinator of Transmission (ICT) Stakeholders Policy Committee Meeting

December 3, 2007.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting noted below. Their attendance is part of the Commission's ongoing outreach efforts.

ICT Stakeholders Policy Committee Meeting

December 11, 2007 (9 a.m.–3 p.m. CST), Crowne Plaza Houston North Greenspoint, 425 N. Sam Houston Pkwy East, Houston, TX 77060, 281–445–9000.

The discussions may address matters at issue in the following proceedings:

Docket No. EL07–52	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. ER08–160	Entergy Services, Inc.
Docket No. ER08–161	Entergy Services, Inc.
Docket No. ER08–162	Entergy Services, Inc.
Docket No. ER07–1385	Entergy Services, Inc.
Docket No. ER08–31	Entergy Services, Inc.
Docket No. OA07–32	Entergy Services, Inc.
Docket No. ER05–1065	Entergy Services, Inc.

[1] *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g,* Order No. 2003–A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g,* Order No. 2003–B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g,* Order No. 2003–C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs* v. *FERC,* 475 F.3d 1277 (D.C. Cir. 2007). See also *Standardization of Small Generator Interconnection Agreements and Procedures,* Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g,* Order No. 2006–A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification,* Order No. 2006–B, FERC Stats. & Regs. ¶ 31,221 (2006), *appeal pending sub nom. Consol. Edison Co. of N.Y., Inc.* v. *FERC,* Nos. 06–1275, et al. (D.C. Cir. filed July 14, 2006 and later); *Interconnection for Wind Energy,* Order No. 661, FERC Stats. & Regs. ¶ 31,186 (2005), *order on reh'g,* Order No. 661–A, FERC Stats. & Regs. ¶ 31,198 (2005).

[2] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 11.

Docket No. EL06–76	Arkansas Public Service Commission v. Entergy Services, Inc.
Docket No. EL06–78	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. ER07–1252	Entergy Services, Inc.
Docket No. EL00–66	Louisiana Public Service Commission v. Entergy.
Docket No. EL03–230	Exxon Mobil v. Entergy.
Docket No. EL05–15	Arkansas Electric Cooperative, Corp. v. Entergy Arkansas, Inc.
Docket No. ER06–1555	Entergy Services, Inc.
Docket No. ER05–1358	KGen Hinds LLC.
Docket No. ER05–1394	KGen Hot Spring LLC.
Docket No. ER05–1419	Hot Spring Power Company, LP.
Docket No. ER07–985	Entergy Services, Inc.
Docket No. ER03–583	Entergy Services, Inc.
Docket No. ER03–681	Entergy Services, Inc.
Docket No. ER03–682	Entergy Services, Inc.
Docket No. ER03–744	Entergy Services, Inc.
Docket No. ER07–956	Entergy Services, Inc.
Docket No. ER07–682	Entergy Services, Inc.

These meetings are open to the public.

For more information, contact Amy Demetry, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6090 or *Amy.Demetry@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23766 Filed 12–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 3, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP97–28–021.
Applicants: Wyoming Interstate Company, Ltd.
Description: Wyoming Interstate Co, Ltd submits 3rd Revised Sheet 103 to FERC Gas Tariff, 2nd Revised Volume 2 for acceptance.
Filed Date: 11/29/2007.
Accession Number: 20071130–0137.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 11, 2007.

Docket Numbers: RP97–255–078.
Applicants: TransColorado Gas Transmission Company
Description: TransColorado Gas Transmission Company submits Seventeenth Revised Sheet 21 et. al. to FERC Gas Tariff, First Revised Volume 1.
Filed Date: 11/21/2007.
Accession Number: 20071130–0134
Comment Date: 5 p.m. Eastern Time on Monday, December 10, 2007.

Docket Numbers: RP99–176–145.
Applicants: Natural Gas Pipeline Co. of America Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America submits Amendment 1 to the Transportation Rate Schedule FTS Agreement with the negotiated rate exhibit etc.
Filed Date: 11/27/2007.
Accession Number: 20071128–0101.
Comment Date: 5 p.m. Eastern Time on Monday, December 10, 2007.

Docket Numbers: RP99–176–146.
Applicants: Natural Gas Pipeline Co of America
Description: Natural Gas Pipeline Co of America submits Original Sheet 26B.06 et. al. to FERC Gas Tariff, Sixth Revised Volume 1, to be effective 12/1/07.
Filed Date: 11/30/2007.
Accession Number: 20071130–0153.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Docket Numbers: RP06–200–039.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline LLC submits First Revised Sheet 8D et. Al. to FERC Gas Tariff, Second Revised Volume 1, to be effective 12/1/07.
Filed Date: 11/30/2007.
Accession Number: 20071130–0155.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Docket Numbers: RP07–320–002.
Applicants: Colorado Interstate Gas Company.
Description: Colorado Interstate Gas Company submits Sub Forty-Fourth Revised Sheet 11A *et. al.* to FERC Gas Tariff, FERC Gas Tariff, First Revised Volume 1, effective 4/4/07 *et. al.*
Filed Date: 11/28/2007.
Accession Number: 20071129–0093.
Comment Date: 5 p.m. Eastern Time on Monday, December 10, 2007.

Docket Numbers: RP07–396–003.
Applicants: Tennessee Gas Pipeline Company
Description: Tennessee Gas Pipeline Company submits 2nd Substitute Ninth Revised Sheet 324 to FERC Gas Tariff, Fifth Revised Volume 1.
Filed Date: 11/27/2007.
Accession Number: 20071128–0102.
Comment Date: 5 p.m. Eastern Time on Monday, December 10, 2007.

Docket Numbers: RP98–18–030.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, LP submits First Revised Sheet 6K to FERC Gas Tariff, First Revised Volume 1, to be effective 12/1/07.
Filed Date: 11/30/2007.
Accession Number: 20071130–0154.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Docket Numbers: RP08–73–000.
Applicants: Texas Eastern Transmission LP
Description: Texas Eastern Transmission, LP submits a petition for waiver of the capacity release mechanism set forth in Section 3.14 of its FERC Gas Tariff, Seventh Revised Volume 1.
Filed Date: 11/27/2007.
Accession Number: 20071129–0071.
Comment Date: 5 p.m. Eastern Time on Monday, December 10, 2007.

Docket Numbers: RP08–74–000.
Applicants: CenterPoint Energy—Mississippi River Tra.
Description: CenterPoint Energy—Mississippi River Transmission Corp submits its Annual Report of Penalty Revenue Credits for the period ending 7/31/07.
Filed Date: 11/28/2007.
Accession Number: 20071129–0070.
Comment Date: 5 p.m. Eastern Time on Monday, December 10, 2007.

Docket Numbers: RP08–75–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Southern Star Central Gas Pipeline, Inc submits its report of net revenue received from cash-outs for the period 10/1/06 through 9/30/07 etc.
Filed Date: 11/29/2007.
Accession Number: 20071130–0021.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 11, 2007.

Docket Numbers: RP08–76–000.
Applicants: Ozark Gas Transmission, L.L.C.
Description: Ozark Gas Transmission, LLC submits Third Revised Sheet 109A to FERC Gas Tariff, Original Volume 1, effective 12/1/07.
Filed Date: 11/29/2007.
Accession Number: 20071130–0020.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 11, 2007.

Docket Numbers: RP08–77–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits its First Revised Sheet 0 and 1 *et. al.* to its FERC Gas Tariff, Sixth Revised Volume 1, to be effective 1/1/08.
Filed Date: 11/29/2007.
Accession Number: 20071130–0135.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 11, 2007.

Docket Numbers: RP08–78–000.
Applicants: Great Lakes Gas Transmission LP.
Description: Great Lakes Gas Transmission Limited Partnership submits its Twenty-Second Revised Sheet 1 *et. al.* to its FERC Gas Tariff, Second Revised Volume 1.
Filed Date: 11/29/2007.
Accession Number: 20071130–0136.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 11, 2007.

Docket Numbers: RP08–79–000.
Applicants: Southern Natural Gas Company.
Description: Southern Natural Gas Co. submits Schedule 1 of their FERC Gas Tariff, annual reconciliation of their storage gas costs to reflect differences between the cost.
Filed Date: 11/29/2007.
Accession Number: 20071130–0138.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 11, 2007.

Docket Numbers: RP08–80–000.
Applicants: Texas Eastern Transmission LP.
Description: Texas Eastern Transmission, LP submits Second Revised Sheet 537A *et. al.* to FERC Gas Tariff, Seventh Revised Volume 1, to be effective 1/1/08.
Filed Date: 11/29/2007.
Accession Number: 20071130–0152.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 11, 2007.

Docket Numbers: RP08–81–000.
Applicants: Texas Gas Transmission. LLC.
Description: Texas Gas Transmission LLC submits Fourth Revised Sheet 36A to FERC Gas Tariff, Second Revised Volume 1, to be effective 1/1/08.
Filed Date: 11/30/2007.
Accession Number: 20071130–0151.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Docket Numbers: RP08–82–000.
Applicants: Kern River Gas Transmission Company
Description: Kern River Gas Transmission Co. submits Fourth Revised Eighteenth Sheet 5 *et. al.* to FERC Gas Tariff, Second Revised Volume 1, to be effective 1/1/08.
Filed Date: 11/30/2007.
Accession Number: 20071130–0150.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Docket Numbers: RP08–83–000.
Applicants: Texas Eastern Transmission LP.
Description: Texas Eastern Transmission, LP submits First Revised Sheet 982 *et. al.* to FERC Gas Tariff, Seventh Revised Volume 1, to be effective 12/30/07.
Filed Date: 11/29/2007.
Accession Number: 20071130–0149.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 11, 2007.

Docket Numbers: RP08–84–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Southern Star Central Gas Pipeline, Inc. submits Seventh Revised Sheet 12 to FERC Gas Tariff, Original Volume 1, to be effective 1/1/08.
Filed Date: 11/30/2007.
Accession Number: 20071130–0148.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Docket Numbers: RP08–85–000.
Applicants: OkTex Pipeline Company, L.L.C.
Description: OkTex Pipeline Co, LLC submits Fifth Revised Sheet 1 *et. al.* to FERC Gas Tariff, Original Volume 1, to be effective 1/1/08.
Filed Date: 11/30/2007.
Accession Number: 20071130–0147.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Docket Numbers: RP08–86–000.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline LLC submits First Revised Sheet 234 *et. al.* to FERC Gas Tariff, Second Revised Volume 1, to be effective 1/1/08.
Filed Date: 11/30/2007.
Accession Number: 20071130–0145.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Docket Numbers: RP08–87–000.
Applicants: Quest Pipelines (KPC).
Description: Quest Pipelines (KPC) submits the Interruptible Revenue Credit Report to FERC Gas Tariff, First Revised Volume 1, for the twelve-month period ending 9/30/07.
Filed Date: 11/30/2007.
Accession Number: 20071130–0146.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Docket Numbers: RP08–88–000.
Applicants: National Fuel Gas Supply Corporation.
Description: National Fuel Gas Supply Corp submits an informational filing showing the calculation of its Transportation and Storage Cost Adjustment to its FERC Gas Tariff, Fourth Revised Volume 1.
Filed Date: 11/30/2007.
Accession Number: 20071130–0144.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Docket Numbers: RP08–89–000.
Applicants: Questar Overthrust Pipeline Company.
Description: Questar Overthrust Pipeline Co submits First Revised Sheet 11 et. al. to FERC Gas Tariff, Second Revised Volume 1–A, to be effective 1/1/08.
Filed Date: 11/30/2007.
Accession Number: 20071130–0143.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Docket Numbers: RP08–90–000.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline LLC submits First Revised Sheet 1 et. al. to FERC Gas Tariff, Second Revised Volume 1, to be effective 1/1/08.
Filed Date: 11/30/2007.
Accession Number: 20071130–0142.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7–23752 Filed 12–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Membership of Performance Review Board for Senior Executives (PRB)

November 29, 2007.

The Federal Energy Regulatory Commission hereby provides notice of the membership of its Performance Review Board (PRB) for the Commission's Senior Executive Service (SES) members. The function of this board is to make recommendations relating to the performance of senior executives in the Commission. This action is undertaken in accordance with Title 5, U.S.C., Section 4314(c)(4). The Commission's PRB will add the following member:

Cynthia A. Marlette.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–23776 Filed 12–6–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2002–0058; FRL–8503–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Request for National Emission Standards for Industrial, Commercial, and Institutional Boilers and Process Heaters; EPA ICR No. 2286.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this action announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 5, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2002–0058, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. EPA, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2002–0058. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Jim Eddinger, Energy Strategies Group, Sector Policies and Program Division, (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5426; fax number: (919) 541–5450; e-mail address: *eddinger.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2002–0058, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments.

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply To?

Affected entities: Entities potentially affected by this action are major sources of hazardous air pollutants (HAP) in the industrial, commercial, and institutional boilers and process heaters source categories. A major source is one that has the potential to emit more than 10 tons per year (tpy) of any HAP, 25 tpy for the total of all HAP, or amounts exceeding any lesser quantity cutoff established pursuant to section 112(a)(1) of the Clean Air Act (CAA).

Title: Information Collection Effort for Facilities with Boilers and/or Process Heaters at Major Sources of HAP Emission.

ICR numbers: EPA ICR No. 2286.01.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The proposed ICR has two components to the information collection. To obtain the information necessary to identify and categorize all boilers and process heaters potentially affected by the revised standard, the first component of this ICR will solicit information from all potentially affected units in the format of an electronic survey under authority of section 114 of the CAA. The survey will be submitted to all facilities that either submitted an initial notification, or if initial notification data is not available, all facilities with Title V permits denoted as a major source of HAP, that have a boiler or process heater listed in their permit.

The second component will consist of requiring, if deemed necessary, again through the issuance of a letter pursuant to the authority of section 114 of the CAA, the owners/operators of up to a total of 350 boilers or process heaters selected at random to conduct in accordance with an EPA-approved protocol stack testing.

The EPA estimates the cost of the electronic survey component of the information collection will be 95,832 hours and $7,685,102. The total annual reporting and recordkeeping burden for the stack testing component of the data gathering effort is estimated to be no more than 29,584 hours and $11,712,769.

Industrial, commercial, and institutional boilers and process heaters were listed as a major source category of HAP on July 16, 1992 (57 FR 31576). Section 112(c)(2) of the CAA requires that we establish National Emission Standards for Hazardous Air Pollutants (NESHAP) for control of HAP from both existing and new major sources, based upon the criteria set out in the CAA section 112(d). The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as the maximum achievable control technology (MACT). The minimum control level allowed for NESHAP (the minimum level of stringency for MACT) is the ''MACT floor,'' as defined under section 112(d)(3) of the CAA. The MACT floor for existing sources is the emission limitation achieved by the average of the best-performing 12 percent of existing sources for categories and subcategories. For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source.

The NESHAP for boilers and process heaters were promulgated at 40 CFR part 63, subpart DDDDD, on September 2004 (see 69 FR 55218), and vacated by the Courts on June 8, 2007. The vacature requires the Agency to revise the standards and the associated MACT floors based on new estimates of potentially affected units.

The previous rulemaking was based upon data gathered for the Industrial Combustion Coordinated Rulemaking, complimented by additional survey data received from non-fossil boiler and process heaters. These data sources are over 10 years old. When the Agency recently compared these data to facilities submitting initial notifications to comply with the vacated standard, a large disparity was identified in the number of potentially affected units at major sources of HAP. Since the last boiler and process heater data gathering effort, many sources have shut down, others have selected to operate with a limit on their HAP emissions in order to avoid being subject to the Boiler and Process Heater NESHAP, and some units have switched out older solid fuel units for newer equipment due to increased insurance and maintenance costs. Therefore, the Agency has concluded that obtaining updated information will be crucial to informing its decision on the revised NESHAP for boilers and process heaters.

The information in both components of this ICR will be collected under authority of section 114 of the CAA. Section 114(a) states, in pertinent part:

For the purpose * * * (iii) carrying out any provision of this Chapter * * * (1) the Administrator may require any person who owns or operates any emission source * * * to– * * * (D) sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator shall prescribe); (E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical * * * (G) provide such other information as the Administrator may reasonably require * * *

The data collected will be used to revise the population of potentially affected boilers and process heaters, and update existing emission test data and fuel analysis information. These data will be used by the Agency to develop the revised NESHAP for boilers and process heaters (and potentially incinerators) under sections 112 and 129 of the CAA. Specifically, the data will respond in part to the two research needs, providing the Agency with updated information on the number of potentially affected units, available emission test data and fuel analysis data to address variability. For a subset of units that may become subject to CAA section 129, and thus be required to conduct stack tests, the data will be used to complete emission data gaps. All data collected will be added to existing emission test databases for boilers, process heaters, and when appropriate, incinerators; it will also be used to further evaluate the HAP emissions from these sources.

This collection of information is mandatory under section 114 of the CAA (42 U.S.C 7414). All information submitted to EPA pursuant to this ICR for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The projected cost and hour burden for this one-time collection of information is $19,398,000 and 125,400 hours. This burden is based on an estimated 3,396 likely respondents to the electronic survey component and an estimated 350 respondents to the stack testing component. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here.

Estimated total number of potential respondents: 3,396.

Frequency of response: One time.

Estimated total average number of responses for each respondent: 1.1 (electronic survey component and stack testing component combined)

Estimated total annual burden hours: 125,400.

Estimated total annual costs: $19,398,000. This includes an estimated burden cost of $7,685,100 for the electronic survey component and an estimated cost of $11,712,800 for the stack testing component.

What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: November 30, 2007.

Frederick Thompson,

Acting Director, Sector Policies and Programs Division.

[FR Doc. E7–23845 Filed 12–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6693–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20070401, ERP No. D–GSA–D80032–DC, Department of Homeland Security Headquarters at the St. Elizabeths West Campus, To Consolidate Federal Office Space on a Secure Site, Washington, DC.

Summary: EPA expressed environmental concerns about impacts to vegetation, historic woodlands, and the cultural landscape, soil contamination, and surface and groundwater. EPA also expressed concern about transportation and environmental justice issues. Rating EC2.

Final EISs

EIS No. 20070408, ERP No. F–AFS–J61107–ND, NE McKenzie Allotment Management Plan Revisions, Proposes to Continue Livestock Grazing on 28 Allotments, Dakota Prairie Grasslands Land and Resource Management Plan, Dakota Prairie Grasslands, McKenzie Ranger District, McKenzie County, ND.

Summary: The final EIS addressed EPA's concerns about impacts to water quality and riparian areas. EPA does not object to the proposed project; however, we recommend future monitoring include numeric criteria along with other narrative indicators.

EIS No. 20070432, ERP No. F–FHW–G40193–LA, I–49 South Project, from Raceland to the Westbank Expressway Route U.S. 90, Funding, Coast Guard Bridge Permit, U.S. Army COE Section 10 and 404 Permits, Jefferson, Lafourche, and St. Charles Parishes, LA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070467, ERP No. F–BLM–G65101–NM, Special Status Species Resource Management Plan Amendment, Managing Public Land and Federal Minerals in Portions of Chaves, Eddy, Lea, and Roosevelt Counties, NM.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070468, ERP No. FS–SFW–K99034–CA, Coachella Valley, Revision to the Multiple Species Habitat Conservation Plan (MSHCP), Natural Community Conservation Plan, Santa Rosa and San Jacinto Mountains Trails Plan, Issuance of Incidental Take Permit, Riverside County, CA.

Summary: No formal letter was sent to the preparing agency.

Dated: December 4, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–23807 Filed 12–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6693–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 11/26/2007 Through 11/30/2007

Pursuant to 40 CFR 1506.9.

EIS No. 20070506, Final EIS, AFS, CA, Phoenix Project, Proposes to Use a Combination of Contract and Forest Service Crew to Treat Poor Forest Health and High Fire Hazard Conditions, Develop a Network Defensible Fuel Profile Zones (DFPZs), Sierraville Ranger District, Tahoe National Forest, Sierra and Nevada Counties, CA, Wait Period Ends: 01/07/2008, Contact: Jeff Leach 530–994–3401 Ext 6680.

EIS No. 20070507, Final EIS, BLM, CA, Eastern San Diego County Resource Management Plan, Implementation, El Centro Field Office, San Diego County, CA, Wait Period Ends: 01/07/2008, Contact: Erin Dreyfuss 760–337–4436.

EIS No. 20070508, Draft EIS, AFS, 00, Wild and Scenic River Suitability Study for National Forest System Lands on the Ashley, Dixie, Fishlake, Manti-La Sal, Uinta and Wasatch-Cache National Forests in UT and Portion of National Forests extend into Colorado and Wyoming, several counties, UT, Montrose County, CO and Uinta County, WY, Comment Period Ends: 01/22/2008, Contact: Catherine Kahlow 435–783–4338.

EIS No. 20070509, Final EIS, FHW, SC, Interstate 73 Southern Project, Construction from I–95 to the Myrtle Beach Region, Funding, NPDES Permit, U.S. Coast Guard Permit, U.S. Army COE Section 404 Permit, Dillon, Horry and Marion Counties, SC, Wait Period Ends: 01/07/2008, Contact: Patrick Tyndall 803–765–5460.

EIS No. 20070510, Draft EIS, FHW, NJ, I–295/I76/Route 42 Direct Connection Project, To Improve Traffic Safety and Reduce Traffic Congestion, Funding and U.S. Army COE Section 10 and 404 Permits, Borough of Bellmawr, Borough of Mount Ephraim and Gloucester City, Camden County, NJ, Comment Period Ends: 02/15/2008, Contact: Lawrence Cullari 609–637–4200.

Amended Notices

EIS No. 20070332, Draft EIS, BLM, OR, Western Oregon Bureau of Land Management Districts of Salem, Eugene, Roseburg, Coos Bay, and Medford Districts, and the Klamath Falls Resource Area of the Lakeview District, Revision of the Resource Management Plans, Implementation, OR, Comment Period Ends: 01/11/2008, Contact: Dick Prather 503–808–6627 Revision of FR Notice Published 08/10/2007: Extending Comment Period from 12/10/2007 to 01/11/2008.

Dated: December 4, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–23820 Filed 12–6–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

December 4, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 7, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *nfraser@omb.eop.gov* or via fax at 202–395–5167, and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* or by U.S. mail to Leslie F. Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Leslie F. Smith via e-mail at *PRA@fcc.gov* or call (202) 418–0217. For further instructions on how to view a copy of this information collection request (ICR), go to this Web page: *http://www.fcc.gob/omd/pra/collections-review.html.*

SUPPLEMENTARY INFORMATION: The Commission has requested approval of this information collection under the emergency processing provisions of the PRA by January 22, 2008.

OMB Control Number: 3060–0804.

Title: Universal Service—Rural Health Care Program/Rural Health Care Pilot Program.

Form Number(s): FCC Forms 465, 466, 466-A, and 467.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions; and state, local, or tribal governments.

Number of Respondents: 6,494.

Estimated Time per Response: 0.10–20 hours.

Frequency of Response: Recordkeeping; on occasion, one time, annual, quarterly, and monthly reporting requirements; third party disclosure.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 67,467 hours.

Total Annual Cost: $0.00.

Privacy Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: In the Telecommunications Act of 1996 (1996 Act), Congress specifically intended that rural health care providers be provided with ''an affordable rate for the services necessary for the provision of telemedicine and instruction relating to such services.'' In 1997, the Commission implemented this statutory directive by adopting the current Rural Health Care support mechanism, which provides universal service support to ensure that rural health care providers pay no more than their urban counterparts for their telecommunications needs and Internet access in the provision of health care services. Despite the Commission's efforts to increase the utility of the Rural Health Care support mechanism, the program has yet to fully achieve the benefits intended by the statute and the Commission. In particular, health care providers continue to lack access to the broadband facilities needed to support the types of advanced telehealth applications, like telemedicine, that are vital to bringing medical expertise and the advantages of modern health technology to rural areas of the Nation. In response, the Commission issued the *2007 Pilot Program Selection Order* (WC Docket No. 02–60; FCC 07–198) which selected 69 participants for the universal service Rural Health Care Pilot Program (which was originally established by the Commission in September 2006). These 69 participants represent 42 states and 3 U.S. territories and will be eligible for approximately $417 million in universal service support over three years (or $139 million per funding year) to: (1) Support up to 85 percent of the costs associated with the construction of state or regional broadband health care networks and with the advanced telecommunications and information services provided over those networks; and (2) support up to 85 percent of the costs of connecting to Internet2 or National LambdaRail, which are both dedicated nationwide backbones, or to the public Internet. To minimize the burden on Pilot Program participants and to streamline the process, the Commission generally uses the same forms as the existing Rural Health Care support mechanism. For example, selected participants, in order to receive support, must submit an FCC Form 465 (seeking bids), FCC 466–A (selection of service provider), and FCC Form 467 (notification of service initiation). Due to the unique structure of the Pilot Program, however, in the *2007 Pilot Program Selection Order*, the Commission provides guidance regarding how these forms should be completed and additional information is required from selected participants, including, proposed network costs worksheets, certifications, letters of agency from each participating health care provider, invoices showing actual incurred costs, and, if applicable, network design studies.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E7–23803 Filed 12–6–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 3, 2008.

A. Federal Reserve Bank of New York (Anne MacEwen, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. The Toronto–Dominion Bank, Toronto, Canada; TD US P&C Holdings ULC, Calgary, Canada; Cardinal Top Co. and Cardinal Intermediate Co., both of New York, New York; to become bank holding companies by acquiring 100 percent of the voting shares of Commerce Bancorp, Inc., Cherry Hill, New Jersey, and thereby indirectly acquire voting shares of Commerce Bank, NA, Philadelphia, Pennsylvania, and Commerce Bank/North, Ramsey, New Jersey; and 14.8 percent of Pennsylvania Commerce Bancorp, Inc., and thereby acquire Commerce Bank/Harrisburg, N.A., both of Harrisburg, Pennsylvania.

B. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. SEB Bancorp, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of Security Exchange Bank, both of Marietta, Georgia.

C. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. First Central Nebraska Company, Broken Bow, Nebraska; to merge with WoodRiver Banco, Incorporated, and thereby indirectly acquire The Farmers Bank, both of Oconto, Nebraska.

Board of Governors of the Federal Reserve System, December 4, 2007.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc.E7–23787 Filed 12–6–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10232, CMS–10120, CMS–10241, CMS–370, 377 and 378]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* State Plan Pre-print for Integrated Medicare and Medicaid Programs; *Use:* Information submitted via the State Plan Amendment (SPA) pre-print will be used by CMS Central and Regional Offices to analyze a State's proposal to implement integrated Medicare and Medicaid programs. The pre-print is an optional document for use by States to highlight the arrangements between a State and Medicare Advantage Special Needs Plans that are also providing Medicaid services. State Medicaid Agencies will complete the SPA pre-print and submit it to CMS for a comprehensive analysis. The pre-print provides the opportunity for States to confirm that their integrated care model complies with both federal statutory and regulatory requirements. The pre-print contains assurances, check-off items, and areas for States to describe policies and procedures for subjects such as enrollment, marketing and quality assurance. *Form Numbers:* CMS–10251 (OMB#: 0938–NEW); *Frequency:* Reporting—Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 30; *Total Annual Hours:* 600.

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* 1932 State Plan Amendment Template, State Plan Requirements and Supporting Regulations in 42 CFR 438.50; *Form No.:* CMS–10120 (OMB#: 0938–0933); *Use:* The State Medicaid Agencies will complete the template. CMS will review the information to determine if the State has met all the requirements under Section 1932(l)(1)(A) of the Social Security Act and 42 CFR 438.50. Once all requirements are met, the State will be allowed to enroll Medicaid beneficiaries on a mandatory basis into managed care entities without section 1115 or 1915(b) waiver authority; *Frequency:* On occasion; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 56; *Total Annual Responses:* 10; *Total Annual Hours:* 100.

3. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Annual State Report and Annual State Performance Rankings; *Use:* The Deficit Reduction Act of 2005 (DRA) requires CMS to contract with a vendor to conduct a monthly national survey of retail prescription drug prices and to report the prices to the States. These national average prices will be used as a benchmark by the States for the management of their prescription drug programs. The law also requires that States report their drug utilization rates for non-innovator multiple source drugs, their payment rates under their State plan, and their dispensing fees. A template will be used to facilitate data collection. The States' rankings are to be presented to the Congress and the States. *Form Number:* CMS–10241 (OMB#: 0938–NEW); *Frequency:* Reporting—Yearly; *Affected Public:* States, Local or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 765.

4. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Health Insurance Benefit Agreement, Ambulatory Surgical Centers (ASC) Request for Certification in the Medicare Program, ASC Survey Report Form and ASC Conditions of Coverage; *Use:* The Health Insurance Benefit Agreement is utilized for the purpose of establishing for payment under Title XVIII of the Social Security Act. The ASC Request for Certification form is utilized as an application for facilities wishing to participate in the Medicare program as an ASC. This form initiates the process of obtaining a decision as to whether the conditions for coverage are met. It also promotes data retrieval from the Online Data Input Edit (ODIE system, a subsystem of the Online Survey Certification and Report (OSCAR) system by CMS Regional Offices (ROs). The ASC Report Form is an instrument used by the State survey agency to record data collection in order to determine supplier compliance with individual conditions for coverage and report it to the Federal Government. The form is primarily a coding worksheet designed to facilitate data reduction and retrieval into the ODIE/OSCAR system at the CMS ROs. This form includes basic information on compliance (i.e., met, not met and explanatory statements) and does not require any descriptive information regarding the survey activity itself. *Form Numbers:* CMS–370, 377, 378 (OMB#: 0938–0266); *Frequency:* Reporting—Occasionally (initially and then every 3 years); *Affected Public:* States, Local or Tribal Governments; *Number of Respondents:* 5123; *Total Annual Responses:* 1707; *Total Annual Hours:* 2,787.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *January 7, 2008*.

OMB Human Resources and Housing Branch, Attention: Katherine Astrich, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: November 30, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–23746 Filed 12–6–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Voluntary Establishment of Paternity.

OMB No.: 0970–0175.

Description: Section 466(a)(5)(C) of the Social Security Act requires States to pass laws ensuring a simple civil process for voluntarily acknowledging paternity under which the State must provide that the mother and putative father must be given notice, orally and in writing, of the benefits and legal responsibilities and consequences of acknowledging paternity. The information is to be used by hospitals, birth record agencies, and other entities participating in the voluntary paternity establishment program.

Respondents: State and Tribal IV–D agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
None	1,025,521	Variable	.166	170,236

Estimated Total Annual Burden Hours: 170,236.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children nd Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 30, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–5964 Filed 12–6–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Head Start Program Information Report.

OMB No.: 0980–0017.

Description: The Office of Head Start within the Administration for Children and Families, United States Department of Health and Human Services, is proposing to renew authority to collect information using the Head Start Program Information Report (PIR). The PIR provides information about Head Start and Early Head Start services received by the children and families enrolled in Head Start programs. The information collected in the PIR is used to inform the public about these programs and to make periodic reports to Congress about the status of children in Head Start programs as required by the Head Start Act.

Respondents: Head Start and Early Head Start program grant recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Program Information Report	2,690	1	4	10,760

Estimated Total Annual Burden Hours: 10,760.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 30, 2007.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 07–5965 Filed 12–6–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Cardiovascular Program Project.

Date: January 23, 2008.

Time: 2:30 p.m. to 4:40 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Holly Patton, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0280, *pattonh@nhlbi.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 29, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5970 Filed 12–6–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5121–N–33]

Notice of Proposed Information Collection: Comment Request; Prepayment of Direct Loans on Section 202 and 202/8 Projects With Inclusion of FHA Mortgage Insurance Guidelines

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 5, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8202, Washington, DC 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Veronica Lewis, Field Asset Management Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 402–2597 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Prepayment of Direct Loans on Section 202 and 202/8 Projects with Inclusion of FHA Mortgage Insurance Guidelines.

OMB Control Number, if applicable: 2502–0554.

Description of the need for the information and proposed use: Request from owner to prepay a multifamily housing project mortgage financed under Section 202 with inclusion of FHA insurance guidelines.

Agency form numbers, if applicable: HUD–9808, Request for Prepayment of Section 202 or 202/8 Project.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection is 300; the number of respondents is estimated to be 150 generating approximately 150 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 2 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 29, 2007.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E7–23733 Filed 12–6–07; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5121–N–34]

Notice of Proposed Information Collection: Comment Request; Use Restriction Agreement Monitoring and Compliance

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 5, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8202, Washington, DC 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Kimberly Munson, Office of Asset Management, Policy and Participation Standards Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–1320 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Use Restriction Agreement Monitoring and Compliance.

OMB Control Number, if applicable:

Description of the need for the information and proposed use: This information is necessary for HUD to ensure that owners of certain multifamily housing projects comply with use restriction requirements once the mortgage agreement is terminated. This information is also used to monitor owner compliance with the Use Restriction Agreement provisions.

Agency form numbers, if applicable: HUD–90060, HUD–90061, HUD–90065, HUD–90066, HUD–93140, HUD–93142, HUD–93143, HUD–93144, HUD–90067, HUD–90068, HUD–90069, HUD–90070, HUD–93150, HUD–93155, HUD–90075.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 454; the frequency of responses is on occasion/annual; estimated time to gather and prepare the necessary documents (combined) is 3 hours per submission, and the estimated total annual burden hours are 1,362.

Status of the proposed information collection: New Collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 29, 2007.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. E7–23735 Filed 12–6–07; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125–N–49]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, Room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a

Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Ms. Kathryn M. Halvorson, Director, Air Force Real Property Agency, 1700 North Moore Street, Suite 2300, Arlington, VA 22209; (703) 696–5502; *Coast Guard:* Commandant, U.S. Coast Guard, Attn: Teresa Sheinberg, 2100 Second St, SW., Rm 6109, Washington, DC 20593–0001; (202) 267–6142; *COE:* Ms. Tracy Beck, Army Corps of Engineers, Office of Counsel, CECC–R, 441 G Street, NW., Washington DC 20314–1000; (202) 761–0019; *Energy:* Mr. John Watson, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–0072; *GSA:* Mr. John E.B. Smith, Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS2603, Washington, DC 20240; (202) 513–0747; *Navy:* Mr. Warren Meekins, Associate Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: November 29, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program; Federal Register Report

Suitable/Available Properties; Land

South Dakota

40 Acres—N–2,
Minuteman Missile Site
Butte, SD
Landholding Agency: GSA
Property Number: 54200740008
Status: Surplus
GSA Number: 7–D–SD–0521–HA
Comments: Restrictions & Covenants

40 acres—Mike 4
Minuteman Missile Launch Facility
Butte, SD 57706
Landholding Agency: GSA
Property Number: 54200740009
Status: Surplus
GSA Number: 7–D–SD–0521–GZ
Comments: Restrictions & Covenants

Unsuitable Properties; Building

California

Bldgs. 02845, 05331, 06790
Edwards AFB
Kern, CA 93524
Landholding Agency: Air Force
Property Number: 18200740001
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 07173, 07175, 07980
Edwards AFB
Kern, CA 93524
Landholding Agency: Air Force
Property Number: 18200740002
Status: Unutilized
Reasons: Secured Area.

Bldg. 259
Naval Air Station
North Island, CA
Landholding Agency: Navy
Property Number: 77200740015
Status: Excess
Reasons: Extensive deterioration Secured Area

Unsuitable Properties; Building

California

Bldg. 41356
Marine Corps Base
Camp Pendleton, CA 92055
Landholding Agency: Navy
Property Number: 77200740017
Status: Excess
Reasons: Secured Area. Extensive deterioration

Florida

Bldg. 01248,
Cape Canaveral AFS
Brevard, FL 32925
Landholding Agency: Air Force
Property Number: 18200740003
Status: Unutilized
Reasons: Secured Area

Bldg. 44426
Cape Canaveral AFS
Brevard, FL 32925
Landholding Agency: Air Force
Property Number: 18200740004
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties; Building

Florida

Bldg. 85406
Cape Canaveral AFS
Brevard, FL 32925
Landholding Agency: Air Force
Property Number: 18200740005
Status: Unutilized
Reasons: Secured Area

88 Facilities
Saufley Field
Pensacola, FL 32508
Landholding Agency: Navy
Property Number: 77200740016
Status: Unutilized
Reasons: Within airport runway clear zone

Hawaii

Bldgs. 1028, 1029
Hickam AFB
Hickam, HI 96853
Landholding Agency: Air Force
Property Number: 18200740006
Status: Unutilized
Reasons: Secured Area

Bldgs. 1710, 1711
Hickam AFB
Hickam, HI 96853
Landholding Agency: Air Force
Property Number: 18200740007
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties; Building

Illinois

Comfort Station
Rend Lake Project
Benton, IL 62812
Landholding Agency: COE
Property Number: 31200740001
Status: Excess.
Reasons: Extensive deterioration

Trailers 092, 120, 121, 143
Fermi Nat'l Accelerator Lab
Batavia, IL 60510
Landholding Agency: Energy
Property Number: 41200740004
Status: Excess
Reasons: Extensive deterioration

Kansas

Vault Toilet
Farnum Creek Boat Ramp
Junction City, KS 66441
Landholding Agency: COE
Property Number: 31200740002
Status: Excess
Reasons: Extensive deterioration

Vault Toilet
North Overlook Park
Junction City, KS 66441
Landholding Agency: COE
Property Number: 31200740003
Status: Excess
Reasons: Extensive deterioration

Unsuitable Properties; Building

Kansas

Vault Toilet
Curtis Creek Boat Ramp
Junction City, KS 66441
Landholding Agency: COE

Property Number: 31200740004
Status: Excess
Reasons: Extensive deterioration

House
Pomona Lake Project
Vassar, KS 66453
Landholding Agency: COE
Property Number: 31200740005
Status: Excess
Reasons: Extensive deterioration

Bldg 25034
Lucas Park
Sylvan Grove, KS 67481
Landholding Agency: COE
Property Number: 31200740006
Status: Excess
Reasons: Extensive deterioration

2 Vault Toilets
Tuttle Creek
Manhattan, KS 66502
Landholding Agency: COE
Property Number: 31200740007
Status: Excess
Reasons: Extensive deterioration

Unsuitable Properties; Building

Kentucky

Sewage Treatment Plant
Smith Ridge Rec Area
Campbellsville, KY 42718
Landholding Agency: COE
Property Number: 31200740008
Status: Excess
Reasons: Extensive deterioration

Missouri

Bldgs 05004, 05008
Cedar Ridge Park
Stockton, MO 65785
Landholding Agency: COE
Property Number: 31200740009
Status: Excess
Reasons: Extensive deterioration

Bldg 11002
Greenfield Access
Stockton, MO 65785
Landholding Agency: COE
Property Number: 31200740010
Status: Excess
Reasons: Extensive deterioration

Bldgs 14008, 14009, 14010
Hawker Point Park
Stockton, MO 65785
Landholding Agency: COE
Property Number: 31200740011
Status: Excess
Reasons: Extensive deterioration

Unsuitable Properties; Building

Missouri

Bldg 34006
Orleans Trail Park
Stockton, MO 65785
Landholding Agency: COE
Property Number: 31200740012
Status: Excess
Reasons: Extensive deterioration

Bldg ES801–8319
Wappapello Lake Project
Wayne, MO 63966
Landholding Agency: COE
Property Number: 31200740013
Status: Excess
Reasons: Extensive deterioration

North Carolina

Bldg MC–A01
Morehead City, NC
Landholding Agency: COE
Property Number: 31200740014
Status: Excess
Reasons: Extensive deterioration

Unsuitable Properties; Building

Ohio

NIKE Site Cd–46
Felicity, OH
Landholding Agency: COE
Property Number: 31200740015
Status: Excess
Reasons: Extensive deterioration

Installation 39875
Hayes Reserve Center
Fremont, OH 43420
Landholding Agency: COE
Property Number: 31200740016
Status: Excess
Reasons: Extensive deterioration

Oklahoma

Gatehouse
Porum Landing
Stigler, OK 75562
Landholding Agency: COE
Property Number: 31200740017
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 42008, 55088
Webbers Falls Lake
Webbers Falls, OK
Landholding Agency: COE
Property Number: 31200740019
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties; Building

South Dakota

Bldg. 2306
Ellsworth AFB
Meade, SD 57706
Landholding Agency: Air Force
Property Number: 18200740008
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material. Secured Area.

Texas

148 Bldgs.
Texoma Lake
Denison, TX
Landholding Agency: COE
Property Number: 31200740018
Status: Unutilized
Reasons: Extensive deterioration

Virginia

Bldgs. JHK–17433, JHK–17446
John H. Kerr Project
Boydton, VA
Landholding Agency: COE
Property Number: 31200740020
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties; Building

Virginia

9 Bldgs.
USCG Cape Charles Station
Winters Quarters
Northampton, VA 23310
Landholding Agency: Coast Guard
Property Number: 88200740001
Status: Unutilized
Reasons: Extensive deterioration

Land

Utah

0.47 acre
Feeder Canal
Hyrum, UT 84319
Landholding Agency: Interior
Property Number: 61200740007
Status: Excess
Reasons: Other—landlocked

[FR Doc. E7–23507 Filed 12–6–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following application to conduct certain activities with endangered species.

DATES: Comments on this permit application must be received on or before January 7, 2008.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the permit number for the application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Grant Canterbury, Fish and Wildlife Biologist, at the above Portland address (telephone: 503–231–2063; fax: 503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicant has applied for a permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 et seq.). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from local, State, and Federal agencies, and the public on the following permit request.

Permit No. 168437

Applicant: Jane R. Ragsdale, Celeste, Texas.

The applicant requests a permit to purchase, in interstate commerce, two female and two male captive bred Hawaiian (=nene) geese (*Branta* [=*Nesochen*] *sandvicensis*) for enhancing their propagation and survival. This notification covers activities conducted by the applicant over the next 5 years.

Public Review of Comments

We solicit public review and comment on this recovery permit application. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: November 13, 2007.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E7–23760 Filed 12–6–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Paperwork Reduction Act Request to Office of Management and Budget

AGENCY: Office of Indian Energy and Economic Development, Interior.

ACTION: Notice.

SUMMARY: This notice announces the Information Collection Request regarding the Job Placement & Training Application, OMB No. 1076–0062, has been submitted to the Office of Management and Budget (OMB) for reinstatement. The collection expired during the renewal process.

DATES: Submit your comments and suggestions on or before January 7, 2008.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Desk Officer for the Department of the Interior. You may submit your comments by e-mail at *OIRA–DOCKET@omb.eop.gov* or by facsimile to 202–395–6566.

Send a copy of your comments to Lynn Forcia, Chief, Division of Workforce Development, Office of Indian Energy and Economic Development, 1951 Constitution Avenue, NW., Mailstop 20 SIB, Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection form may be obtained by contacting Lynn Forcia at 202–219–5270. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Abstract

The information collection process is necessary to assess work history and training needs of adult Indians who reside on or near Indian reservations, and who desire to obtain reasonable and satisfactory employment. The information collection document provides data necessary to administer the Job Placement & Training program. The Department is authorized to undertake a program of Job Placement which may include financial assistance, vocational training (including apprenticeships and on-the-job training), counseling, guidance, and related services for any recognized vocation. The program is available to Indians who are not less than 18 years old and who reside on or near an Indian reservation (and in Alaska). Public Law 84–959 and Public Law 88–230 authorize the BIA to enter into contracts or agreements with Federal, State, and local government agencies or associations with non-apprenticeship programs, apprenticeship programs, or on-the-job training that leads to skilled employment. The same application form is used for both 25 CFR Parts 26 (Employment Assistance for Adult Indians) and 27 (Vocational Training for Adult Indians). Information of a confidential nature is protected by the Privacy Act. A request for comments on this information collection was published in the **Federal Register** on July 6, 2007 (72 FR 37043). No comments received.

Request for Comments

Comments are invited on (a) whether the information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including through the use of automated collection techniques or other forms of information technology.

The Office of Management and Budget has up to 60 days to approve or disapprove the information collection form, but may respond after 30 days; therefore, comments submitted in response to this notice should be submitted to OMB within 30 days in order to assure their maximum consideration.

Please note that all comments are available for public review during regular office hours. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowed by law. All comments from businesses or representatives of businesses will be open for public review.

Data

Title: Job Placement & Training Program Application Form (changed to be consistent with other similar federal programs).

OMB Approval Number: 1076–0062.

Summary of Collection of Information: The collection of information provides pertinent data concerning the individual's previous training and employment background, current training and employment plans, and to determine eligibility for program services. An eligible PL93–638 contractor may choose to only contract the Job Placement portion of this program or only the Job Training portion, or both simultaneously.

Frequency: Applications are filed on an as needed basis.

Description of respondents: Individual tribal members residing on or near reservations seeking training for purposes of job placement services, or job ready individuals seeking employment services.

Estimated completion time: One-half hour.

Number of Annual responses: 4,900.

Annual Burden hours: 2,450 hours.

Cost Burden: There are no costs other than salary.

Dated: November 16, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–23723 Filed 12–6–07; 8:45 am]

BILLING CODE 4310–4M–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

Emergency Closure Notice

AGENCY: Bureau of Land Management, Folsom Field Office, California, Interior.

ACTION: Emergency closure of public lands in Yuba County, California.

SUMMARY: Notice is hereby given that two parcels of public land are temporarily closed to all motorized vehicle use. The purpose of this emergency order is to protect federally-listed anadromous fish species, specifically Central Valley fall-run chinook salmon (federal candidate species), Central Valley spring-run chinook salmon (federally threatened), and Central Valley steelhead (federally threatened).

The closed area, approximately 160 acres, is described as follows: All public lands in T16N, R5E, Section 22 and lands in T16N, R5E, Section 27, Lots 7 and 8, and the riverbed between the above stated lands.

Closure signs will be posted at main entry points to these areas. Maps of the closure area may be obtained from the Folsom Field Office, 63 Natoma Street, Folsom, CA 95630. Phone: (916) 985–4474.

DATES: The closure will take effect immediately, and will remain in effect for less than six months until the Sierra Resource Management Plan and supplemental rules relevant to this closure are finalized.

FOR FURTHER INFORMATION CONTACT: Bill Haigh, Bureau of Land Management, 63 Natoma Street, Folsom, CA 95630. Phone: (916) 985–4474.

Discussion of the Rules: Under the authority of 43 CFR 8364.1(a) and 8341.2, the Bureau of Land Management will enforce the following rules on public lands within the closed area: One must not enter the closed area with a motorized vehicle.

Exemptions: This closure order does not apply to: (1) Any federal, state or local government law enforcement officer engaged in enforcing this closure order or member of an organized rescue or fire fighting force while in the performance of an official duty; and (2) Any BLM employee, agent, or contractor while in the performance of an official duty, or any person expressly authorized by BLM.

SUPPLEMENTARY INFORMATION: BLM is implementing this action on 160 acres of public land in Yuba County, California. BLM has observed motorized vehicles entering the river over salmon and steelhead spawning redds. Salmon and steelhead spawning in this reach of the river are all listed in some capacity by the U.S. Fish and Wildlife Service. This reach of the river is also designated as critical habitat for these species by the U.S. Fish and Wildlife Service. Motorized use is adversely impacting spawning habitat and redds for these anadromous fish species. Consequently, this area is being closed to motorized use.

Penalties: The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S. 1733(a), 43 CFR 8341.2, and 43 CFR 8364.1(a)). Any person who violates this closure may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: November 15, 2007.

William S. Haigh,

Manager, Folsom Field Office.

[FR Doc. 07–5952 Filed 12–6–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–07–1610–DQ–087L]

Notice of Availability of the Bay Proposed Resource Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a proposed Resource Management Plan/Final Environmental Impact Statement (RMP/EIS) for the Bay planning area, located in southwest Alaska.

DATES: BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest that is or may be adversely affected, may protest the BLM's approval or amendment of an RMP. That person must file a protest within 30 days of the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. Instructions for filing protests are described in the Dear Reader letter of the Bay Proposed RMP/Final EIS and in the ''Additional Protest Information'' section of this notice. Please consult BLM's Planning Regulations at 43 CFR 1610.5–2 for further instructions on protests.

FOR FURTHER INFORMATION CONTACT: Chuck Denton, BLM Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, AK 99507, (907) 267–1246 or (800) 478–1263.

SUPPLEMENTARY INFORMATION: The Bay planning area includes 1,927,083 acres of BLM-administered public lands and resources in the Bristol Bay and Goodnews Bay areas of southwest Alaska. The Bay Proposed RMP/Final EIS focuses on the principles of multiple use and sustained yield as prescribed by Section 202 of FLPMA. The Proposed RMP/Final EIS considers and analyzes four alternatives, including a No Action and a Preferred Alternative. The alternatives provide for an array of variable levels of commodity production and resource protection.

The alternatives were developed based on public scoping and participation, as required by the BLM's Land Use Planning Handbook (H–1601–1). The public involvement and collaboration process included nine public scoping meetings, six public meetings on the Draft RMP/EIS, and meetings with other interested parties. The BLM consulted with Alaska Native tribes; federal, state, and local government agencies; elected community officials; and the BLM's Alaska Resource Advisory Council. Involvement with the State of Alaska throughout the planning process was achieved through a joint BLM/State position, which provided a liaison between the State and the BLM.

Primary issues addressed through this planning process include: (1) Natural resources protection, primarily water and fisheries resources, due to the proposed lifting of land withdrawals and possible locatable mining exploration and development on BLM- and State of Alaska-managed lands; (2) social and economic conditions, including subsistence resources; and (3) ACEC (Area of Critical Environmental Concern) determination.

In addition to these issues, the Bay Proposed RMP/Final EIS addresses management of various program areas such as vegetation, fish and wildlife habitat, fire management, cultural resources, visual resources, forest resources, and realty. The Proposed RMP/Final EIS also resulted in development of required operating procedures (ROPs), which are requirements, procedures, management practices, or design features the BLM adopts as operational requirements for permitted activities. The ROPs were developed to ensure that Alaska Statewide Land Health Standards are met.

As required by 43 CFR 1610.7–2, areas with potential for designation as ACECs were considered during the Bay planning process. The preferred alternative recommends the designation of one ACEC, known as the Carter Spit ACEC. Final acreage for the proposed 36,220-acre Carter Spit ACEC will depend on the result of land conveyance to the State of Alaska and Native corporations. This ACEC is proposed to provide additional protections for Steller's eiders (*Polysticta stelleri*), a federally-listed migratory bird species, and coastal salt-marsh habitat in the Goodnews Bay area. Use limitations within the boundary of the ACEC include:

- Limited OHV (off-highway vehicle) designation.
- Avoidance Area for rights-of-ways.
- Open to fluid mineral leasing subject to special stipulations.
- Open to locatable mineral entry subject to required operating procedures.
- Closed to salable mineral activities.

All comments received on the plan were analyzed and evaluated. Substantive comments and the BLM's responses to those comments can be found in the appendices of the Proposed RMP/Final EIS. Comments on the Draft RMP/EIS received from the public and BLM review comments were incorporated into the Proposed RMP/Final EIS. Public comments resulted in changes to the preferred alternative through the addition of clarifying text and additional analysis of impacts, and contributed to the adjustment of the boundary of the proposed Carter Spit ACEC. A summary of these changes follows the Executive Summary of the Proposed RMP/Final EIS.

Copies of the Bay Proposed RMP/Final EIS have been sent to affected federal, state, and local government agencies and to interested parties. The document is available for public inspection at the BLM Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, AK, during normal business hours from 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Interested persons may also view the document on the Internet at *http://www.blm.gov/ak,* or at one of the following locations in Alaska: BLM Alaska State Office (Anchorage), Alaska Resources Library and Information Services (University of Alaska Anchorage), Z.J. Loussac Library (Anchorage), Dillingham Public Library, Naknek Public Library, Homer Public Library, City of Goodnews Bay, City of New Stuyahok, City of Quinhagak, and Lake and Peninsula Borough Planning Department (King Salmon).

Additional Protest Information: E-mailed and faxed protests will not be accepted as valid protests unless the protesting party also provides a copy of the original letter postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mailed or faxed protest as an advance copy and it will receive full consideration. Please direct faxed protests to the attention of the BLM protest coordinator at (202) 452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov*. All protests, including the follow up letter (if faxing or e-mailing), must be in writing and mailed to one of the following addresses:

Regular Mail: Director (210), Attn: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: Director (210), Attn: Brenda Williams, 1620 L Street NW., Suite 1075, Washington, DC 20036.

Before including your address, phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 7, 2007.

Gust C. Panos,

Associate State Director.

Editorial Note: This document was received at the Office of the Federal Register on Monday, December 3, 2007.

[FR Doc. E7–23719 Filed 12–6–07; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–07–1610–DQ]

Notice of Availability of Eastern San Diego County Proposed Resource Management Plan and Final Environmental Impact Statement, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS) for the Eastern San Diego County planning area managed by the El Centro Field Office.

DATES: BLM Planning Regulations set forth the provisions applicable to protests (43 CFR 1610.5–2). A person who meets the conditions as described in the regulations cited above, and who wishes to file a protest, must file said protest within 30 days of the date this notice is published in the **Federal Register**. Additional information on protests is set forth in the Dear Reader letter of the Eastern San Diego County Proposed RMP and Final EIS and in the Supplementary Information section of this notice. To ensure compliance with the protest regulations, please consult BLM's Planning Regulations at 43 CFR 1610.5–2.

ADDRESSES: A copy of the Proposed RMP/Final EIS has been sent to affected Federal, State and local government agencies and interested parties. The document will be available electronically at the following Eastern San Diego County RMP Web site: *http://www.ca.blm.gov/elcentro*. Copies of the PRMP/FEIS will be available for public inspection at the following locations:

- Bureau of Land Management, California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, CA 95825.
- Bureau of Land Management, El Centro Field Office, 1661 S. 4th Street, El Centro, CA 92243.

FOR FURTHER INFORMATION CONTACT: Erin Dreyfuss, Eastern San Diego County RMP Team Leader, at (760) 337–4400, Bureau of Land Management, 1661 S. 4th Street, El Centro, CA 92243; *caesdrmp@ca.blm.gov*.

SUPPLEMENTARY INFORMATION: The planning area for the Eastern San Diego County RMP is the El Centro Field Office's area of management responsibility. A total of approximately 103,000 acres of public lands are administered by the BLM in the planning area. The decisions in the RMP will only apply to BLM-administered lands and mineral estate in the planning area. The Eastern San Diego County Proposed RMP and Final EIS have been developed through collaborative planning and consider four alternatives. Primary issues include: renewable energy, sensitive natural and cultural resources, livestock grazing, energy and mineral development, visual resources, and motorized vehicle route designations. The Proposed RMP/FEIS includes consideration of the designation of Areas of Critical Environmental Concern (ACECs). The proposed plan includes retaining all or portions of the following existing ACECs: In-Ko-Pah ACEC—(currently 22,186 acres); Table Mountain ACEC—(currently 4,293 acres). In the Proposed RMP/FEIS, the In-Ko-Pah ACEC would be reduced in the north and east to avoid overlap with designated wilderness and wilderness study areas, and expanded in the south and west to include critical habitat for Peninsular Bighorn Sheep. Use of public lands within these ACECs would vary, depending on the resources and/or values identified but would likely include limitations on OHV use and livestock grazing.

Comments on the Eastern San Diego County Draft RMP/EIS received from the public and internal BLM review comments were incorporated into the Proposed RMP. Public comments resulted in corrections, clarifying text, and the addition of new data used in the analysis of impacts. The Proposed Eastern San Diego County RMP would provide comprehensive, long-range decisions for the use and management of resources in the planning area administered by the BLM and focus on the principles of multiple use and sustained yield.

As noted above, instructions for filing a protest with the Director of the BLM regarding the Proposed RMP and Final EIS are described in 43 CFR 1610.5–2. E-mailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by regular or overnight mail postmarked by the close of the protest period. Under these conditions, BLM will consider the e-mailed or faxed protest as an advance copy and it will receive full consideration. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at (202) 452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov*.

All protests, including the follow-up letter (if e-mailing or faxing) must be in writing and mailed to one of the following addresses:

Regular Mail:
Director (210)
Attention: Brenda Williams
P.O. Box 66538
Washington, DC 20035

Overnight Mail:
Director (210)
Attention: Brenda Williams
1620 L Street, NW., Suite 1075
Washington, DC 20036

Before including your address, phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 19, 2007.

Vicki L. Wood,

Field Manager.

[FR Doc. E7–23771 Filed 12–6–07; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–600]

In the Matter of Certain Rechargeable Lithium-Ion Batteries, Components Thereof, and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Terminating From the Investigation the Last Remaining Respondents Hitachi Koki USA and CDW Corp.; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') (Order No. 19) in the above-captioned investigation terminating this investigation, as to the last remaining respondents, Hitachi Koki USA (''Hitachi'') and CDW Corp. (''CDW'').

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on April 27, 2007, based on a complaint filed by 3M Company and 3M Innovative Properties Company of St. Paul, Minnesota (collectively ''3M''). 72 FR 21,050 (April 27, 2006). The complaint, as amended and supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain rechargeable lithium-ion batteries, components thereof, and products containing the same by reason of infringement of one or more of claims 1, 2, 13, and 15–19 of U.S. Patent No. 6,964,828 (''the '828 patent'') and claims 10, 15, 16, and 22 of U.S. Patent No. 7,078,128 (''the '128 patent''). The amended complaint also alleges that a domestic industry exists with regard to the '828 and '128 patents under 19 U.S.C. 1337 subsections (a)(2) and (a)(3). The amended complaint names Sony Corporation and Sony Electronics, Inc. (collectively, ''Sony''); Lenovo Group Ltd. (Hong Kong) and Lenovo Inc. (USA) (collectively, ''Lenovo''); CDW; Batteries Com, LLC (''Batteries Com''); Hitachi; Matsushita Industrial Electric Co., Ltd. (''Matsushita''); Panasonic Corporation of North America (''Panasonic''); Total Micro Technologies Inc. (''Total Micro''); and Sanyo Electric Co., Ltd. (''Sanyo'') as the proposed respondents. The amended complaint requests that the Commission institute an investigation pursuant to section 337 and, after the investigation, issue a permanent exclusion order and cease and desist orders. Subsequently, respondents Sony, Lenovo, Batteries Com, Matsushita, Panasonic, Total Micro, and Sanyo were terminated from the investigation. None of those determinations were reviewed by the Commission.

On November 9, 2007, the ALJ issued the subject ID terminating this investigation as to Hitachi and CDW pursuant to Commission rule 210.21 on the basis of settlement agreements with the suppliers of the batteries at issue. No petitions for review of the ID were filed. The Commission has determined not to review the ID.

3M filed a supplement to its motion pursuant to Commission rule 210.16 that it does not seek a general exclusion order. 3M also filed a declaration stating that it does not seek entry of a limited exclusion order against the lone defaulting respondent, Total Micro. The investigation is therefore terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.21, 210.41, and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.41, 210.42).

By order of the Commission.

Issued: December 3, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–23761 Filed 12–6–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–600]

In the Matter of Certain Rechargeable Lithium-Ion Batteries, Components Thereof, and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation as to Respondent Sanyo Electric Co., LTD. Based on a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') (Order No. 18) in the above-captioned investigation terminating this investigation, as to respondent Sanyo Electric Co., Ltd. (''Sanyo'').

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on April 27, 2007, based on a complaint filed by 3M Company and 3M Innovative Properties Company of St. Paul, Minnesota (collectively ''3M''). 72 FR 21,050 (April 27, 2006). The complaint, as amended and supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain rechargeable lithium-ion batteries, components thereof, and products containing the same by reason of infringement of one or more of claims 1, 2, 13, and 15–19 of U.S. Patent No. 6,964,828 (''the '828 patent'') and claims 10, 15, 16, and 22 of U.S. Patent No. 7,078,128 (''the '128 patent''). The amended complaint also alleges that a domestic industry exists with regard to the '828 and '128 patents under 19 U.S.C. § 1337 subsections (a)(2) and (a)(3). The amended complaint names Sony Corporation and Sony Electronics, Inc. (collectively, ''Sony''); Lenovo Group Ltd. (Hong Kong) and Lenovo Group Inc. (USA) (collectively, ''Lenovo''); CDW Corporation; Batteries Com, LLC; Hitachi Koki USA, Ltd.; Matsushita Industrial Electric Co., Ltd.; Panasonic Corporation of North America; Total Micro Technologies Inc. (''Total Micro''); and Sanyo Electric Co., Ltd. as the proposed respondents. Subsequently, the target date of November 28, 2008 (19 months) was set and, later, respondents Matsushita Industrial Electric Co., Ltd., Panasonic Corporation of North America, Batteries Com, Lenovo, Total Micro, and Sony were terminated from the investigation on the basis of settlement agreements. None of those determinations were reviewed by the Commission.

On November 9, 2007, the ALJ issued the subject ID terminating this investigation as to Sanyo pursuant to Commission rule 210.21 based on a settlement agreement between Sanyo and 3M. No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.21, 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42).

By order of the Commission.

Issued: December 3, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–23762 Filed 12–6–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[Docket No. ATF 25N]

Commerce in Explosives; List of Explosive Materials (2007R–7T)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice.

ACTION: Notice of list of explosive materials.

SUMMARY: Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, the Department must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. 841 *et. seq.* The list covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in 18 U.S.C. 841(c). This notice publishes the 2007 List of Explosive Materials.

DATES: The list becomes effective upon publication of this notice on December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Gary Bangs, Chief; Explosives Industry Programs Branch; Arson and Explosives Programs Division; Bureau of Alcohol, Tobacco, Firearms and Explosives; United States Department of Justice; 99 New York Avenue, NE., Washington, DC 20226 (202–648–7120).

SUPPLEMENTARY INFORMATION: The list is intended to include any and all mixtures containing any of the materials on the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all-inclusive. The fact that an explosive material is not on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in 18 U.S.C. 841. Explosive materials are listed alphabetically by their common names followed, where applicable, by chemical names and synonyms in brackets.

The Department has not added any new terms to the list of explosives or removed or revised any listing since its last publication.

This list supersedes the List of Explosive Materials dated September

27, 2006 (Docket No. ATF 19N, 71 FR 56555).

Notice of List of Explosive Materials

Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, I hereby designate the following as explosive materials covered under 18 U.S.C. 841(c):

A

Acetylides of heavy metals
Aluminum containing polymeric propellant
Aluminum ophorite explosive
Amatex
Amatol
Ammonal
Ammonium nitrate explosive mixtures (cap sensitive)
*Ammonium nitrate explosive mixtures (non-cap sensitive)
Ammonium perchlorate having particle size less than 15 microns
Ammonium perchlorate composite propellant
Ammonium perchlorate explosive mixtures
Ammonium picrate [picrate of ammonia, Explosive D]
Ammonium salt lattice with isomorphously substituted inorganic salts
*ANFO [ammonium nitrate-fuel oil]
Aromatic nitro-compound explosive mixtures
Azide explosives

B

Baranol
Baratol
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)]
Black powder
Black powder based explosive mixtures
*Blasting agents, nitro-carbo-nitrates, including non-cap sensitive slurry and water gel explosives
Blasting caps
Blasting gelatin
Blasting powder
BTNEC [bis (trinitroethyl) carbonate]
BTNEN [bis (trinitroethyl) nitramine]
BTTN [1,2,4 butanetriol trinitrate]
Bulk salutes
Butyl tetryl

C

Calcium nitrate explosive mixture
Cellulose hexanitrate explosive mixture
Chlorate explosive mixtures
Composition A and variations
Composition B and variations
Composition C and variations
Copper acetylide
Cyanuric triazide
Cyclonite [RDX]
Cyclotetramethylenetetranitramine [HMX]
Cyclotol
Cyclotrimethylenetrinitramine [RDX]

D

DATB [diaminotrinitrobenzene]
DDNP [diazodinitrophenol]
DEGDN [diethyleneglycol dinitrate]
Detonating cord
Detonators
Dimethylol dimethyl methane dinitrate composition
Dinitroethyleneurea
Dinitroglycerine [glycerol dinitrate]
Dinitrophenol
Dinitrophenolates
Dinitrophenyl hydrazine
Dinitroresorcinol
Dinitrotoluene-sodium nitrate explosive mixtures
DIPAM [dipicramide; diaminohexanitrobiphenyl]
Dipicryl sulfone
Dipicrylamine
Display fireworks
DNPA [2,2-dinitropropyl acrylate]
DNPD [dinitropentano nitrile]
Dynamite

E

EDDN [ethylene diamine dinitrate]
EDNA [ethylenedinitramine]
Ednatol
EDNP [ethyl 4,4-dinitropentanoate]
EGDN [ethylene glycol dinitrate]
Erythritol tetranitrate explosives
Esters of nitro-substituted alcohols
Ethyl-tetryl
Explosive conitrates
Explosive gelatins
Explosive liquids
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons
Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies
Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels
Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels
Explosive mixtures containing sensitized nitromethane
Explosive mixtures containing tetranitromethane (nitroform)
Explosive nitro compounds of aromatic hydrocarbons
Explosive organic nitrate mixtures
Explosive powders

F

Flash powder
Fulminate of mercury
Fulminate of silver
Fulminating gold
Fulminating mercury
Fulminating platinum
Fulminating silver

G

Gelatinized nitrocellulose
Gem-dinitro aliphatic explosive mixtures
Guanyl nitrosamino guanyl tetrazene
Guanyl nitrosamino guanylidene hydrazine
Guncotton

H

Heavy metal azides
Hexanite
Hexanitrodiphenylamine
Hexanitrostilbene
Hexogen [RDX]
Hexogene or octogene and a nitrated N-methylaniline
Hexolites
HMTD [hexamethylenetriperoxidediamine]
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen]
Hydrazinium nitrate/hydrazine/aluminum explosive system
Hydrazoic acid

I

Igniter cord
Igniters
Initiating tube systems

K

KDNBF [potassium dinitrobenzo-furoxane]

L

Lead azide
Lead mannite
Lead mononitroresorcinate
Lead picrate
Lead salts, explosive
Lead styphnate [styphnate of lead, lead trinitroresorcinate]
Liquid nitrated polyol and trimethylolethane
Liquid oxygen explosives

M

Magnesium ophorite explosives
Mannitol hexanitrate
MDNP [methyl 4,4-dinitropentanoate]
MEAN [monoethanolamine nitrate]
Mercuric fulminate
Mercury oxalate
Mercury tartrate
Metriol trinitrate
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum]
MMAN [monomethylamine nitrate]; methylamine nitrate
Mononitrotoluene-nitroglycerin mixture
Monopropellants

N

NIBTN [nitroisobutametriol trinitrate]
Nitrate explosive mixtures
Nitrate sensitized with gelled nitroparaffin
Nitrated carbohydrate explosive
Nitrated glucoside explosive
Nitrated polyhydric alcohol explosives

Nitric acid and a nitro aromatic compound explosive
Nitric acid and carboxylic fuel explosive
Nitric acid explosive mixtures
Nitro aromatic explosive mixtures
Nitro compounds of furane explosive mixtures
Nitrocellulose explosive
Nitroderivative of urea explosive mixture
Nitrogelatin explosive
Nitrogen trichloride
Nitrogen tri-iodide
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine]
Nitroglycide
Nitroglycol [ethylene glycol dinitrate, EGDN]
Nitroguanidine explosives
Nitronium perchlorate propellant mixtures
Nitroparaffins Explosive Grade and ammonium nitrate mixtures
Nitrostarch
Nitro-substituted carboxylic acids
Nitrourea

O

Octogen [HMX]
Octol [75 percent HMX, 25 percent TNT]
Organic amine nitrates
Organic nitramines

P

PBX [plastic bonded explosives]
Pellet powder
Penthrinite composition
Pentolite
Perchlorate explosive mixtures
Peroxide based explosive mixtures
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate]
Picramic acid and its salts
Picramide
Picrate explosives
Picrate of potassium explosive mixtures
Picratol
Picric acid (manufactured as an explosive)
Picryl chloride
Picryl fluoride
PLX [95% nitromethane, 5% ethylenediamine]
Polynitro aliphatic compounds
Polyolpolynitrate-nitrocellulose explosive gels
Potassium chlorate and lead sulfocyanate explosive
Potassium nitrate explosive mixtures
Potassium nitroaminotetrazole
Pyrotechnic compositions
PYX [2,6-bis(picrylamino)] 3,5-dinitropyridine

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine]

S

Safety fuse
Salts of organic amino sulfonic acid explosive mixture
Salutes (bulk)
Silver acetylide
Silver azide
Silver fulminate
Silver oxalate explosive mixtures
Silver styphnate
Silver tartrate explosive mixtures
Silver tetrazene
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive)
Smokeless powder
Sodatol
Sodium amatol
Sodium azide explosive mixture
Sodium dinitro-ortho-cresolate
Sodium nitrate explosive mixtures
Sodium nitrate-potassium nitrate explosive mixture
Sodium picramate
Special fireworks
Squibs
Styphnic acid explosives

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene]
TATB [triaminotrinitrobenzene]
TATP [triacetonetriperoxide]
TEGDN [triethylene glycol dinitrate]
Tetranitrocarbazole
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate]
Tetrazole explosives
Tetryl [2,4,6 tetranitro-N-methylaniline]
Tetrytol
Thickened inorganic oxidizer salt slurried explosive mixture
TMETN [trimethylolethane trinitrate]
TNEF [trinitroethyl formal]
TNEOC [trinitroethylorthocarbonate]
TNEOF [trinitroethylorthoformate]
TNT [trinitrotoluene, trotyl, trilite, triton]
Torpex
Tridite
Trimethylol ethyl methane trinitrate composition
Trimethylolthane trinitrate-nitrocellulose
Trimonite
Trinitroanisole
Trinitrobenzene
Trinitrobenzoic acid
Trinitrocresol
Trinitro-meta-cresol
Trinitronaphthalene
Trinitrophenetol
Trinitrophloroglucinol
Trinitroresorcinol
Tritonal

U

Urea nitrate

W

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive)
Water-in-oil emulsion explosive compositions

X

Xanthamonas hydrophilic colloid explosive mixture

Approved: November 28, 2007.

Michael J. Sullivan,

Acting Director.

[FR Doc. E7–23729 Filed 12–6–07; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend OMB approval of the information collection: Claim for Continuance of Compensation (CA–12). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 5, 2008.

ADDRESSES: Mr. Steven Andoseh, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–3201, Washington, DC 20210, telephone (202) 693–0373, fax (202) 693–1451, *E-mail andoseh.steven@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8133. The Act provides that eligible dependents of deceased employees receive compensation benefits on account of the employee's death. OWCP has to monitor death benefits for current marital status, potential for dual benefits, and other criteria for qualifying as a dependent under the law. The CA–12 is sent annually to beneficiaries in death cases to ensure that their status has not changed and that they remain entitled to benefits. This information collection is currently approved for use through June 30, 2008.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval for the extension of this currently approved information collection in order to ensure that compensation is being paid correctly and to determine eligibility for benefits.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Claim for Continuance of Compensation.

OMB Number: 1215–0154.

Agency Number: CA–12.

Affected Public: Individuals or Households.

Total Respondents: 4,850.

Total Annual responses: 4,850.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 403.

Frequency: Annually.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,989.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 30, 2007.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E7–23720 Filed 12–6–07; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–086)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: December 7, 2007.

FOR FURTHER INFORMATION CONTACT: James J. McGroary, Patent Counsel, Marshall Space Flight Center, Mail Code LS01, Huntsville, AL 35812; telephone (256) 544–0013; fax (256) 544–0258.

NASA Case No. MFS–32390–1: Hybrid Cryogenic Tank Construction and Method for Manufacture Therefor;
NASA Case No. MFS–32400–1: Gas-Generator Augmented Expander Cycle Rocket Engine;
NASA Case No. MFS–32438–1: High Power RF Solid State Power Amplifier System;
NASA Case No. MFS–32439–1: Radio Frequency Power Load and Associated Method;
NASA Case No. MFS–32124–1: High-Speed Friction Stir Welding System;
NASA Case No. MFS–32548–1: System and Method for Determining Velocity of Electrically Conductive Fluid.

Dated: November 30, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7–23736 Filed 12–6–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–087)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, Ames Research Center, Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104; fax (650) 604–2767.

NASA Case No. ARC–15981–1: Chaperonin-Based Templates for Pseudo-Cellulosomes;
NASA Case No. ARC–16059–1: Adaptive Control Method for Aircraft with Modified Control System;
NASA Case No. ARC–15173–2: Nanoengineered Thermal Materials Based on Carbon Nanotube Array Composites;
NASA Case No. ARC–15668–1: Pyrotechnic Rotary Valve Actuator.

Dated: November 30, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7–23737 Filed 12–6–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–088)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and

Trademark office, and are available for licensing.

DATES: December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Bryan A. Geurts, Patent Counsel, Goddard Space Flight Center, Mail Code 140.1, Greenbelt, MD 20771–0001; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No. GSC–15124–1: Microsphere Fiber Laser System;
NASA Case No. GSC–15206–1: Otoacoustic Protection in Biologically-Inspired Systems;
NASA Case No. GSC–15039–1: Miniaturized Double Latching Solenoid Valve;
NASA Case No. GSC–15136–1: Blocking Contacts for N–Type Cadmium Zinc Telluride;
NASA Case No. GSC–15333–1: Flexure Based Linear and Rotary Bearings;
NASA Case No. GSC–15357–1: System and Method for Determining Stability of a Neural System;
NASA Case No. GSC–15368–1: Nanowire Device and Method of Making a Nanowire Device;
NASA Case No. GSC–15341–1: Systems, Methods, and Apparatus of a Low Conductance Silicon Micro-Leak for Mass Spectrometer Inlet.

Dated: November 30, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7–23738 Filed 12–6–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–089)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, and are the subjects of patent applications that have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Mark W. Homer, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–200, Pasadena, CA 91109; telephone (818) 354–7770.

NASA Case No. DRC–007–041: Cable Tensiometer for Aircraft;
NASA Case No. NPO–44079–1: Enhanced Interference Cancellation and Telemetry Reception in Multipath Environments with a Single Parabolic Dish Antenna Using a Focal Plane Array;
NASA Case No. NPO–44383–1: Method of Shifting and Fixing Optical Frequency of an Optical Resonator, and Optical Resonator Made by Same;
NASA Case No. NPO–44469–1: Differential Temperature Sensor System and Method;
NASA Case No. NPO–45113–1: Nanotunneling Junction-Based Hyperspectral Polarimetric Photodetector and Detection Method.

Dated: November 30, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7–23739 Filed 12–6–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–090)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Edward K. Fein, Patent Counsel, Johnson Space Center, Mail Code AL, Houston, TX 77058–8452; telephone (281) 483–4871; fax (281) 483–6936.

NASA Case No. MSC–24115–1: Method and Apparatus for Fabric Circuits and Antennas;
NASA Case No. MSC–24273–1: Method for the Design and Analysis of the Primary Load Bearing Layer that Interfaces to the Structural Pass-through of an Inflatable Vessel;
NASA Case No. MSC–23563–1: Nanoencapsulated Aerogels Produced by Monomer Vapor Deposition and Polymerization.

Dated: November 30, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7–23741 Filed 12–6–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–091)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Randy Heald, Patent Counsel, Kennedy Space Center, Mail Code CC–A, Kennedy Space Center, FL 32899; telephone (321) 867–7214; fax (321) 867–1817.

NASA Case No. KSC–12875: Self-Validating Thermocouple;
NASA Case No. KSC–12637–2: Removal of PCB and Other Halogenated Organic Contaminants Found in Ex Situ Structures;
NASA Case No. KSC–12539–2: Self-Healing Wire Insulation.

Dated: November 30, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7–23742 Filed 12–6–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–092)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Linda B. Blackburn, Patent Counsel, Langley Research Center, Mail Code 141, Hampton, VA 23681–2199; telephone (757) 864–3221; fax (757) 864–9190.

NASA Case No. LAR–17317–1: Extreme Low Frequency Acoustic Measurement Portable System;
NASA Case No. LAR–17213–1: High Altitude Airship Configuration and Power Technology and Method for Operation of Same;
NASA Case No. LAR–17300–1: System and Method for Determination of the Reflection Wavelength of Multiple Low-Reflectivity Bragg Gratings in a Sensing Optical Fiber;
NASA Case No. LAR–17440–1: Resonant Difference-Frequency Atomic Force Ultrasonic Microscope;
NASA Case No. LAR–17433–1: Wireless System and Method for Collecting Rotating System Data;
NASA Case No. LAR–17502–1: Flame Holder System;
NASA Case No. LAR–17355–1: System and Method for Aiding Pilot Preview, Rehearsal, Review, and Real-Time Visual Acquisition of Flight Mission Progress;
NASA Case No. LAR–17444–1: Wireless Tamper Detection Sensor and Sensing System;
NASA Case No. LAR–17135–1: Fabrication of Metal Nanoshells.

Dated: November 30, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7–23744 Filed 12–6–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 72 FR 50410, and no substantial comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.* Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, *Attention:* Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 925, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: EHR Generic Clearance.

OMB Approval Number: 3145–0136.

Expiration Date of Approval: January 31, 2008.

Abstract

The National Science Foundation (NSF) requests renewal of program accountability and communication data collections (e.g. surveys, face-to-face and telephone interviews, observations, and focus groups) that describe and track the impact of NSF funding that focuses on the Nation's science, technology, engineering and mathematics (STEM) education and STEM workforce. NSF funds grants, contracts, and cooperative agreements to colleges, universities, and other eligible institutions, and provides graduate research fellowships to individuals in all parts of the United States and internationally.

The Directorate for Education and Human Resources (EHR), a unit within NSF, promotes rigor and vitality within the Nation's STEM education enterprise to further the development of the 21st century's STEM workforce and public scientific literacy. EHR does this through diverse projects and programs that support research, extension, outreach, and hands-on activities serving STEM learning and research at all institutional (e.g. pre-school through postdoctoral) levels in formal and informal settings; and individuals of all ages (birth and beyond). EHR also focuses on broadening participation in STEM learning and careers among United States citizens, permanent residents and nationals, particularly those individuals traditionally underemployed in the STEM research workforce, including but not limited to women, persons with disabilities, and racial and ethnic minorities.

At the request of the Office of Management and Budget (OMB) an EHR Generic Clearance was established in 1995 to integrate management, monitoring and evaluation information pertaining to the NSF's Education and Training (E & T) portfolio in response to the Government Performance and Results Act (GPRA) of 1993. Under this generic survey clearance (OMB 3145–0136), data from the NSF administrative databases are incorporated with findings gathered through initiative-, divisional-, and program-specific data collections. The scope of the EHR Generic Clearance primarily covers descriptive information gathered from education and training projects that are funded by NSF. Most programs subject to EHR Generic data collection are funded by the EHR Directorate, but some are funded in whole or in part by disciplinary directorates or multi-disciplinary or cross-cutting programs. Since 2001 in accordance with OMB's Terms of Clearance, NSF primarily uses the data from the EHR Generic Clearance for program planning, management and audit purposes to respond to queries from the Congress, the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors, and the NSF's Office of the Inspector General.

OMB has limited the collection to three categories of descriptive data: (1) Staff and project participants (data that are also necessary to determine individual-level treatment and control groups for future third-party study); (2) project implementation characteristics (also necessary for future use to identify well-matched comparison groups) and (3) project outputs (necessary to measure baseline for pre- and post-NSF-funding-level impacts.)

Use of the Information: This information is required for effective administration, communication, program and project monitoring and evaluation, and for measuring attainment of NSF's program, project and strategic goals, as required by the President's Management agenda as represented by the Office of Management and Budget's (OMB) Program Assessment Rating Tool (PART); the Deficit Reduction Act of 2005 (Pub. L. 109–171) which established the Academic Competitiveness Council (ACC), and the NSF's Strategic Plan. The Foundation's FY 2006–2011 Strategic Plan describes four strategic outcome goals of Discovery, Learning, Research Infrastructure, and Stewardship. NSF's complete strategic plan may be found at: *http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf0648*.

The work of the multi-agency ACC employed a methodological framework to determine STEM education program effectiveness. The ACC was chaired by the Department of Education, and other agencies that participated included the NSF and the National Aeronautics and Space Administration (NASA). The ACC suggested cross-agency STEM education goals and metrics and developed a framework or ''*Hierarchy of Study Designs*'' under three scientific categories: (1) Experimental (often called randomized controlled trials—RCT) (2) quasi-experimental (such as well-matched comparison group studies) and (3) other (such as pre- and post-test and multiple methodologies). Further details on the participating agencies and the ACC's recommendations are available at: *http://www.ed.gov/about/inits/ed/competitiveness/acc-mathscience/index.html*.

Since the EHR Generic Clearance research is primarily used for accountability purposes, including responding to queries from Committees of Visitors and other scientific experts, a census rather than sampling design typically is necessary. At the individual project level, funding can be adjusted based on individual project's responses to some of the surveys. Some data collected under the EHR Clearance serve as baseline data for separate research and evaluation studies. The EHR Generic Clearance may be used to clear data collections for other ACC agencies, such as NASA. In February 2007 NASA and NSF signed a *Memorandum of Understanding (MOU)* to coordinate efforts promoting STEM education, the participation of individuals underrepresented in STEM, and evaluation of STEM education projects and programs in formal and informal settings. Additional information on the NSF–NASA MOU can be found at: *http://education.nasa.gov/divisions/higher/overview/F_One_Giant_Step_STEM_Education.html*.

In order to conduct program or portfolio level evaluations, however, both experimental and quasi-experimental evaluation research studies on STEM education interventions require researchers to identify individual-level and organizational or project-level control and treatment groups or comparison groups. NSF-funded contract or grantee researchers and evaluators in part may identify control, comparison, or treatment groups for NSF's E&T portfolio using some of the descriptive data gathered through OMB 3145–0136 to conduct well-designed, rigorous research and portfolio evaluation studies.

In accordance with the 2001 and 2005 OMB terms of clearance, NSF requests separate stand-alone clearance (and separately announces for comment in the **Federal Register**) any program or portfolio research or evaluation. Two examples of third-party evaluations that used EHR OMB 3145–0136 data to inform study design are: OMB 3145–0190 (Expired: 5/2005) Evaluation of NSF's Louis Stokes Alliances for Minority Participation (LSAMP) program conducted by the Urban Institute and OMB No. 3145–0182 (Expired 7/2005) Evaluation of the Initial Impacts of the Integrative Graduate Education Research and Traineeship (IGERT) program conducted by Abt Associates. For more information on these and other NSF-funded evaluations, please see the NSF's FY 2006 Full Performance and Accountability Report: Appendix 4B: Table of External Evaluations at: *http://www.nsf.gov/pubs/2007/nsf0701/pdf/19.pdf*.

Respondents: Individuals or households, not-for-profit institutions, business or other for profit, and Federal, State, local or tribal government.

Number of Respondents: 27,000.

Burden on the Public: The total estimate for this collection is 60,000 annual burden hours. This figure is based on the previous 3 years of collecting information under this clearance and anticipated collections. The average annual reporting burden is between .5 and 50 hours per 'respondent' depending on whether a respondent is a direct participant who is self-reporting, or representing a project and reporting on behalf of many project participants.

Dated: December 4, 2007.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 07–5975 Filed 12–6–07; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No.: 70–27]

BWX Technologies, Inc.; Environmental Assessment and Finding of No Significant Impact Related to Proposed Issuance of an Exemption From 10 CFR 70.24 Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment (EA) and finding of no significant impact (FONSI).

FOR FURTHER INFORMATION CONTACT: Amy M. Snyder, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop EBB–2C40M, Washington, DC 20555–0001, telephone (301) 492–3225 and e-mail *ams3@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under U.S. Nuclear Regulatory Commission (NRC) license SNM–42 and the provisions of 10 CFR Part 70, Domestic Licensing of Special Nuclear Material, BWX Technologies, Inc. (BWXT or the licensee) is authorized to receive and possess special nuclear material for the research, fabrication and assembly of nuclear fuel and related components at its facility, located in Lynchburg, Virginia. Under this license, BWXT is also allowed to receive, acquire, and transfer irradiated fuel (spent nuclear fuel) at its facility. The NRC staff is considering the issuance of an exemption to requirements of Title 10 of the Code of Federal Regulations (10 CFR) Section 70.24, under a certain condition, for the spent nuclear fuel storage areas at the BWXT site. If the NRC decides to grant the exemption, then the license will be amended to incorporate a license condition to reflect the exemption. These actions would then allow BWXT to implement its proposed method to meet the January 16, 2007, NRC Order (EA–07–011) requiring BWXT to implement additional security measures at the BWXT site. The licensee found that if these measures are taken, it would not be in full compliance with the criticality monitoring requirements of 10 CFR 70.24. Granting this exemption would also allow BWXT to continue to store, in a safe configuration, spent nuclear fuel.

The NRC has prepared an EA in support of granting an exemption and amending the license. Based on this EA, the NRC has concluded that a FONSI is appropriate and, therefore, an environmental impact statement (EIS) is not warranted. The NRC is also conducting a safety review of the BWXT request for exemption. The results of the safety review will be documented in a separate Safety Evaluation Report.

II. Environmental Assessment

Background

By letter, dated May 2, 2007, BWXT submitted its exemption request. On May 14, 2007, BWXT submitted, via email, a clarification that stated its current Environmental Report (ER), dated March 10, 2004, addresses the areas where spent nuclear fuel, previously used for research, is stored at the site.

The documents that were evaluated in preparing this EA included the NRC's EA for Renewal of License SNM–42, dated August 2005, the current BWXT ER for Renewal of License SNM–42, dated March 10, 2004, and the e-mail from BWXT (Leah Morrell, May 14, 2007) stating, with respect to this exemption request, that the BWXT's ER, dated March 10, 2004, is the current ER.

Review Scope

The purpose of this EA is to assess the environmental impacts of the proposed exemption and associated license amendment. It does not approve the request. This EA is limited to the proposed exemption from the requirements of 10 CFR 70.24 in spent nuclear fuel storage areas, and any cumulative impacts on existing plant operations. The existing conditions and operations at the BWXT facility were evaluated, by the NRC, for environmental impacts in an EA for the renewal of the BWXT license. This assessment presents the information and analysis of the proposed actions for determining whether issuance of a FONSI is appropriate.

Need for the Proposed Action

As a result of the events of September 11, 2001, the NRC has required heightened security measures for facilities that are authorized to possess special nuclear material. BWXT is one such facility. Following an evaluation, by BWXT, of ways to meet these required security measures, BWXT concluded that the best method to meet those measures would affect the current criticality monitoring system. Specifically, the implementation of BWXT's proposed method to implement the NRC Security Order (EA–07–011) would make the detection of a criticality challenging for the criticality monitoring systems located in each spent nuclear fuel storage area when the additional security measures imposed by EA–07–011 are in place. The additional security measures are not currently in place.

The Proposed Actions

The proposed actions are: (1) The NRC granting an exemption to the requirements of 10 CFR 70.24 in the spent fuel storage areas during the period of time the licensee does not need to access the spent nuclear fuel; and (2) the NRC issuing an amendment to the license reflecting such an exemption. These actions would allow BWXT to continue to safely store spent nuclear fuel in storage systems. This exemption would not apply during the short and very infrequent periods during which access to the stored material is required, or if BWXT no longer has spent nuclear fuel at its licensed site. The proposed actions are in accordance with the licensee's application dated May 2, 2007.

Alternative to the Proposed Actions

The actions available to the NRC are:

1. Approve the exemption and associated license amendment as described; or

2. No action (i.e., deny the request and do not amend the license—the no-action alternative.)

Affected Environment

The affected environment for the proposed action and the alternative is the BWXT site. The affected environment is identical to the affected environment assessed in the EA, dated August 2005. A full description of the site and its characteristics is given in the NRC's 2005 EA.

Environmental Impacts of the Proposed Action and the No Action Alternative

The NRC staff has completed its evaluation of the environmental impacts of the proposed action and concludes granting the licensee an exemption to the criticality monitoring requirements of 10 CFR 70.24 for the spent nuclear fuel storage system during periods when access to the spent nuclear fuel is not required; and would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents. No changes are being made in the types of effluents that may be released off-site. There is no significant increase in the amount of any effluent released off-site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites because no previously undisturbed area will be affected by the proposed actions. The proposed action does not affect non-radiological plant effluents and has no other effect on the environment. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action and, thus, concludes that the proposed action will not have any significant impact to the human environment. The proposed action does not alter the previous National Environmental Protection Act findings made in approving the license renewal.

Environmental Impacts of the Alternative to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the no-action alternative). Denial of the exemption request would result in: (1) No associated license amendment: and (2) no change to current environmental impacts, as the denial would result in the criticality monitoring requirements of 10 CFR 70.24 continuing to be fully applicable. Thus, the environmental impacts of the proposed action and the alternative action are identical because the present or absence of a criticality monitor and alarm for the spent nuclear fuel that is safety stored has no impact on the environment.

Agencies and Persons Consulted

In accordance with NUREG 1748, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs,'' the NRC staff consulted with other agencies regarding the proposed actions. These consultations were intended to provide other agencies an opportunity to comment on the proposed actions, and to ensure that the requirements of Section 106 of the National Historic Preservation Act, and Section 7 of the Endangered Species Act were met with respect to the proposed actions.

Commonwealth of Virginia

The staff, on October 10, 2007, consulted with the Virginia Department of Environmental Quality (VDEQ) and the Virginia Department of Health (VDH). The VDEQ reviewed the draft and agreed with NRC's conclusion that no significant environmental impacts would result from this proposed action, if implemented. The VDH had technical questions regarding the criticality monitoring systems.

Fish and Wildlife

The staff has determined that consultation for Section 7 of the Endangered Species Act is not required because the proposed action does not involve construction or any other change in physical environment, therefore, will not affect listed species or critical habitat.

Virginia Department of Historic Resources

The staff has determined that the proposed action does not have the potential to effect on historic properties because it does not involve construction or any other change in physical environment. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

Conclusion

On the basis of the EA, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment and that preparation of an EIS is not warranted.

III. Finding of No Significant Impact

On the basis of this assessment, the Commission has concluded that environmental impacts that are associated with the proposed action would not be significant and the Commission is making a finding of no significant impact.

Preparers

J. Wiebe, Project Manager, All Sections
A. Snyder, Project Manager, Sections 1.0, 4.0 and 5.0.

List of References

1. BWXT. Request for Exemption from 10 CFR 70.24, Letter (May 2, 2007) to Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Lynchburg, Virginia: BWXT, Nuclear Products Division (confidential)
2. NRC. NUREG 1748, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs—Final Report. (August 2003) Washington, DC: NRC (ML032450279)
3. BWXT. Environmental Report for Renewal of License SNM–42, March 10, 2004 (nonpublic)
4. BWXT. E-mail to NRC, Criticality Exemption, dated May 14, 2007 (ML073180015)
5. NRC. Environmental Assessment Related to the Renewal of License No. SNM–42. Docket 70–027 (August 2005) Washington, DC: NRC. (ML071300450)
6. NRC. E-mail to VDEQ, Pre-decisional EA, dated October 9, 2007, (ML073180022)
7. NRC. E-mail to VDH, Pre-decisional EA, dated October 10, 2007, (ML073180034)
8. VDH. Letter to NRC, Response to Pre-decisional EA, dated October 24, 2007 (ML73180017)
9. NRC. E-mail to VDH, Additional Comments on Pre-decisional EA, dated October 31, 2007 (ML073180027)
10. VDH. E-mail to NRC, Response to Additional Comments on Pre-decisional EA, dated October 31, 2007 (ML073180029)
11. VEQ. Letter to NRC, Response to Pre-decisional EA, dated October 17, 2007 (ML073230756)

Dated at Rockville, Maryland this 30th day of November, 2007.

For the Nuclear Regulatory Commission.

Kevin M. Ramsey,

Acting Chief, Fuel Manufacturing Branch, Fuel Facility Licensing Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E7–23784 Filed 12–6–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Financial Reporting for Grants and Cooperative Agreements: Federal Financial Report (FFR)

AGENCY: Office of Management and Budget, Office of Federal Financial Management.

ACTION: Comment request; final notice.

SUMMARY: The Office of Management and Budget is consolidating and replacing four existing financial reporting forms (SF–269, SF–269A, SF–272, and SF–272A) with a single *Federal Financial Report (FFR)*. The purpose of the *FFR* is to give recipients of grants and cooperative agreements a standard format for reporting the financial status of their grants and cooperative agreements (hereby referred to collectively as awards). Federal awarding agencies developed the *FFR* as part of their implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

DATES: Comments must be received by January 7, 2008.

ADDRESSES: Comments should be addressed to Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503; telephone 202–395–7844; fax 202–395–3952; e-mail *mpridgen@omb.eop.gov*. Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Please include "FFR comments" in the subject line of the e-mail message; please also include the full body of your comments in the text of the message and as an attachment. Include your name, title, organization, postal address, telephone number, and e-mail address in your message.

FOR FURTHER INFORMATION CONTACT: Marguerite Pridgen at the addresses noted above.

SUPPLEMENTARY INFORMATION:

I. Background

On April 8, 2003, OMB announced in the **Federal Register** its intent to establish a new *Federal Financial Report (FFR)* (68 FR 17097). This new report would consolidate into a single report the current Financial Status Report (SF–269 and SF–269A) and the Federal Cash Transactions Report (SF–272 and SF–272A). This consolidation, consistent with government-wide grant streamlining efforts being carried out under the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107), is intended to streamline and simplify award-reporting requirements. This form was an undertaking of the interagency Post Award Workgroup that supports the Federal Grants Streamlining Initiative. Additional information on the Federal Grants Streamlining Initiative, which focuses on implementing Public Law 106–107, was announced in the **Federal Register** on September 13, 2006 (71 FR 54098). An overview of the *FFR* and five other report forms being developed under the Initiative was provided during a webcast of the Grants Policy Committee of the U.S. Chief Financial

Officer Council held on March 8, 2007 (72 FR 7090).

The *FFR* standardizes reporting information by providing a pool of data elements from which agencies can choose to use for reporting purposes. As a result, Federal agencies are not required to collect all of the information included in the *FFR*. Instead, they will identify, prior to or at time of award, the data elements that recipients must complete, the reporting frequency, the periods covered by each report, the dates that the reports are due, and the locations to which the reports are to be submitted.

Consistent with Federal efforts to promote standardization while giving agencies more flexibility in post-award administration, agencies may require recipients to submit interim *FFR*s on a quarterly, semi-annual, or annual basis, all in accordance with standard period end dates. The immediate availability of the *FFR* may be in a paper format or portable document format (PDF). However, the *FFR*'s data elements are intended to be used in the future for the electronic submission and collection of financial information. Note that the establishment of the government-wide *FFR* will necessitate amendments to OMB Circulars A–110 (2 CFR 215) and A–102 which OMB will subsequently publish in the **Federal Register**.

The April 8, 2003 announcement in the **Federal Register** generated nearly 200 comments from Federal agencies and a wide range of recipients including state and local governments, non-profit entities, institutions of higher education, and associations representing academic institutions. Those comments, which are summarized below, were considered in developing this **Federal Register** notice.

Due to the number of the comments received and form revisions made, OMB announced that it intended to issue a second 60-day notice (68 FR 44975). However, instead of issuing a second 60-day notice, OMB chose other avenues such as a webcast and posting of the forms on Grants.gov to allow for public viewing and feedback (72 FR 7090). The primary concern raised to OMB through this interaction is that as the draft form was written, different officials could be responsible for the ''Federal cash'' and the ''Federal Expenditures and Unobligated Balances'' sections of the form. OMB determined that this was an issue for the submitting organization and therefore, OMB did not make any changes to the form based upon this concern. No other substantive comments were received during the webcast and posting and OMB did not make any changes based upon the posting. We anticipate that this will be the last notice before the form and instructions are finalized.

II. Comments and Responses on 2003 Federal Register Notice

Comment 1: Six comments expressed strong support for the proposed *FFR*, viewing it as a welcome initiative to simplify and streamline grant-reporting requirements, consistent with the Federal Financial Assistance Management Improvement Act (Pub. L. 106–107).

Response: The government-wide workgroup made a diligent effort to streamline and simplify Federal grant reporting requirements.

Comment 2: Six comments suggested changes to the *FFR*'s format to provide additional clarity.

Response: In response to those comments, a page number block was added to the *FFR* Attachment, the OMB approval number was moved to the lower right corner of the *FFR*, section titles such as ''Federal Expenditures and Unobligated Balance'' are now in bold font, and references to sections of the *FFR* consistently state the line or box number followed by a reference to specific letters, if applicable.

Comment 3: Ten comments suggested ways to strengthen and clarify the *FFR*'s instructions.

Response: In response to these suggestions, the following modifications were made to the *FFR* Instructions: (1) Noted the possible impact of the *FFR* on an agency's internal business processes; (2) Explained how the *FFR* could be used to provide reporting data on single and multiple awards; (3) Explained how the *FFR* could be used to report cash management and financial status activity; and (4) Requested additional supplemental pages if recipients needed more space.

Comment 4: One comment indicated that the clearances conducted by OMB's Office of Information and Regulatory Affairs, as required under the Paperwork Reduction Act, were not shown on the *FFR*.

Response: A burden statement has been added to the bottom of the *FFR* and the updated *FFR* has been cleared by the Office of Information and Regulatory Affairs.

Comment 5: Three comments suggested that the frequency of reports should be based on the risk level associated with specific awards.

Response: The *FFR* allows agencies to determine the frequency that recipients submit reports for each award or program. That frequency can be based on the agency's assessment of the level of risk associated with the award or program. Since agencies can base the frequency of reports on risk levels, no changes were made to either the *FFR* or its instructions.

Comment 6: Two comments indicated that the timeframes for reporting on the cash management of a grant and the financial status of a grant differ and requested that the instructions provide directions on using the same form to meet these different reporting timeframes.

Response: The workgroup is mindful of the differences between the current SF–269 and SF–272 reporting timeframes as well as the varying size, complexity, and risk associated with grant programs and individual awards. As a result, the *FFR* allows agencies to determine the cash management and financial status reporting requirements for each award. *FFR* Instructions have been updated to state: ''For a particular award, agencies may require cash management reporting more or less frequently than financial status reporting. Alternatively, agencies may request, for a particular award, the submission of *FFR*s at a given reporting interval (e.g., quarterly) to reflect cash management activity and a separate *FFR* at a different reporting interval (e.g., annually) to reflect financial status activity.''

Comment 7: Two comments highlighted that a program's authorizing statutes should require the submission of monthly financial status reports.

Response: The *FFR* instructions were amended to indicate that agencies requiring more frequent reporting may do so if more frequent reporting is prescribed by statute and/or consistent with the provisions in OMB Circulars A–102 or A–110 dealing with special award conditions and exceptions to standard reporting frequencies. If an agency wants to deviate from any of these requirements, it must obtain approval from OMB.

Comment 8: One comment suggested substituting ''funding or grant period'' for ''project'' in the instructions concerning the submission of final reports: ''Final reports shall be submitted no later than 90 days after the project end date.'' The primary reason for this comment was that each budget period has its own final report.

Response: In accordance with OMB's administrative circulars, agencies should request final reports only at the completion of the project or grant period. The *FFR* instructions have not changed and continue to state ''Final reports shall be submitted no later than 90 days after the project or grant period end date.'' If an agency wants to deviate from this requirement by submitting final reports for each budget period, it must obtain approval from OMB.

Comment 9: One comment pertained to the instructions on due-date extensions: ''Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.'' Specifically, the comment expressed concern that requesting extensions past a 30-day timeframe would be an additional burden.

Response: Due dates are necessary, but circumstances may dictate that due dates be extended to help ensure the submission of complete and accurate reports. As a result, the workgroup did not limit the extension period to 30 days.

Comment 10: One comment recommended that the second bullet entitled ''Instructions to Federal Agencies, Reporting Frequency,'' be removed because the language ''may be used'' is confusing when compared to the language in the three other bullets that is more prescriptive because the word ''shall'' is used.

Response: The section called ''Instructions to Federal Agencies, Reporting Frequency'' has been removed; however, we have reviewed language in other parts of the instructions to ensure that the wording on reporting frequency is consistent.

Comment 11: One comment suggested changing ''30 days'' to ''one month'' and ''90 days'' to ''three months.''

Response: Days were used instead of months because of the need to establish consistent report submission periods. The periods are now 45 days and 90 days.

Comment 12: Several comments objected to reducing the timeframe for submission of interim annual reports from 90 days to 30 days. One comment requested 120 days to submit the *FFR*.

Response: The instructions have been changed to state: ''Quarterly, semi-annual, and annual interim reports are due 45 days after the end of the reporting period. Final reports are due no later than 90 days after the project or grant period end date. Extensions of reporting due dates may be approved by the Federal agency upon request by the recipient.'' The due dates for submitting interim reports allow for standardization. The workgroup concluded that sound fiscal grant management throughout the annual reporting period, combined with the use of electronic systems to collect and transmit data, would allow recipients sufficient time to complete the annual reports within the 45 day timeframe. The shortened timeframe for the submission of annual interim reports would also allow Federal agencies to obtain financial data in a more timely manner. Additionally, the timeframe for submission of quarterly and semi-annual reports was increased from 30 days to 45 days. The workgroup further concluded that 120 days for submission of annual and final reports was too lengthy and would not provide agencies with the data necessary to monitor projects or grants effectively and to make timely funding decisions. Moreover, recipients are provided the opportunity to request extensions for submitting reports in both OMB Circular A–110 (2 CFR 215) and *FFR* Instructions.

Comment 13: One comment noted that under existing timelines, the SF–269 Financial Status Report is due no later than 45 days after the end of each reporting period and requested that this existing 45-day timeline remain in place. Another comment requested reinstatement of the 90-day due date for interim reports, while still another disagreed with reducing the due date from 90 days to 30 days for final reports.

Response: The existing timelines for submission of the SF–269, as stated in OMB Circular A–110 (2 CFR 215), are 30 days for quarterly and semi-annual reports and 90 days for annual and final reports. As a result, there currently is no provision for submission of interim reports 45 days after the reporting period end date. Moreover, only annual interim reports (not quarterly or semi-annual) are allowed to be submitted 90 days after the reporting period end date. The proposed notice stated: ''Final reports shall be submitted no later than 90 days after the project end date.'' The due date for final reports has not been reduced to 30 days in the final notice.

Comment 14: One comment expressed concern regarding the costs of system, policy, and other changes associated with revised due dates.

Response: In an effort to be responsive to public comments regarding grants streamlining and ensuing legislation, Federal agencies and recipients may need to make several system, policy, and other changes. The costs of these changes, which will be borne by both Federal agencies and recipients, are necessary to achieve long-term grants streamlining efficiencies and promote greater customer service. In some instances, provisions have been made to accommodate financial hardships that may be experienced by recipients with the advent of government-wide grants streamlining. For example, recipients may still be given the option of submitting forms and reports on paper rather than having to create or modify electronic systems that may be cost prohibitive. Also, Federal agencies that use grants data systems that are maintained by OMB-approved Grants Management Line of Business consortium leads will not be updating their agency's legacy systems to accommodate the receipt of the forms. Federal agencies that have not yet migrated to an OMB-approved Grants Management Line of Business consortium are required to coordinate with OMB prior to performing enhancements or interim improvements to legacy systems.

Comment 15: One comment noted that the requirement to submit final reports no later than 90 days after the project end date conflicts with the instruction in section 23, ''Grants Management Common Rule,'' that requires grantees to liquidate all obligations incurred no later than 90 days after the end date.

Response: No conflict exists. Recipients should strive to liquidate obligations within 90 days of the project or grant period end date before they submit the final *FFR*, which is also due within 90 days after the project or grant period end date. If, however, the timing of liquidating obligations precludes submission of the final *FFR* within 90 days of the project or grant period end date, recipients can request an extension.

Comment 16: Seven comments requested that reporting period end dates be based on award dates, consistent with current practice, rather than on the proposed reporting period end dates: 3/31, 6/30, 9/30, or 12/31.

Response: The decision to adopt calendar quarters for the reporting period end dates was made to promote standardization, thereby reducing the current reporting burden associated with different reporting period end dates among different grants. If a Federal agency wants to use reporting period end dates other than 3/31, 6/30, 9/30, or 12/31, it must obtain approval from OMB.

Comment 17: Eight comments requested greater standardization. Some of the comments suggested using one standardized format that could not be changed or modified. Others indicated that allowing agencies to determine the data elements to be submitted would diminish the objective of standardization and suggested having one set of data elements that all recipients must complete. Still other comments suggested that the *FFR* simply combines the data elements contained in the current SF–269, SF–269A, SF–272, and SF–272A, so it does not advance streamlining objectives.

Response: The proposed *FFR* advances standardization by providing a pool of data elements from which agencies can customize their reporting requirements without imposing an undue burden on recipients by adding or modifying elements. In addition, agencies cannot add or modify *FFR* data elements unless they submit compelling requests to OMB for approval. OMB will evaluate all requests for changes and modifications, and exercise utmost prudence in approving exceptions in order to prevent the proliferation of multiple financial reporting forms.

Requiring agencies to use all of the data elements in the proposed *FFR* is not practical. As an example, ''Recipient Share and Program Income'' does not apply to some programs and awards. Furthermore, the *FFR* is designed to accommodate reporting on the cash management of single or multiple awards and on the financial status of a single award, so this flexibility is not conducive to mandating the completion of a required set of elements. Finally, the data that each agency needs to adequately monitor awards differ greatly because of the wide variety of governing statutes, regulations, and policies. As a result, requiring recipients to report on all data on a standardized *FFR* could actually result in the submission of data that would not be useful or required, while increasing the reporting burdens to recipients.

In developing the standard pool of data elements, the workgroup assessed the SF–269, SF–269A, SF–272, and SF–272A, eliminating or combining many of the existing data elements. The *FFR* also promotes standardization through the development of one set of instructions and definitions for reports submitted to a single location within an agency, and the use of standardized timeframes for reporting period end dates and due dates.

Comment 18: Five comments suggested that OMB follow a standard frequency for report submissions.

Response: The degree to which monitoring is needed varies in view of the risks, statutes, regulations, and policies governing programs and awards, so the frequency of reporting should be commensurate with these factors. In addition, adopting a standardized frequency for report submissions could be detrimental to an agency's ability to adequately monitor a program or award.

The *FFR* promotes standardization by requiring the use of reporting period end dates for quarterly, semi-annual, and annual interim reports: 3/31, 6/30, 9/30, or 12/31. It further requires the submission of quarterly, semi-annual, and annual interim reports 45 days after the end of each reporting period and final reports no later than 90 days after the project or grant period end date. Extensions of reporting due dates may be approved by the Federal agency upon request by the recipient.

Comment 19: Eleven comments questioned use of the *FFR* to report on single and multiple awards. Some comments indicated that reporting financial status information for multiple awards on one report would be meaningless and an administrative burden. Other comments questioned why detailed data were required for individual awards, but not for multiple awards. One comment asked whether the Federal agency could require a recipient to report all Federal and recipient expenditures for a single award rather than multiple awards. Another comment stated that the *FFR* Attachment does not provide reporting for ''Cash Receipts'' or ''Cash on Hand,'' so the *FFR* cannot be used to determine if a recipient has excess cash on hand.

Response: The *FFR* Instructions have been clarified to better explain the procedures for reporting on single and multiple awards.

A single *FFR* will not be used to report totals on the financial status of multiple awards. Instead, a separate *FFR* must be completed for each award when the financial status (Lines 10d through 10q) for more than one award is requested by the agency. Currently, agencies have the choice between collecting detailed financial status data on a single award (using the SF–269 or SF–269A) or collecting summary cash management data on multiple awards (using the SF–272 or SF–272A). The *FFR* preserves this flexibility while allowing recipients to submit these data on one form. If an agency wants to obtain detailed financial status data on more than one award, it must instruct recipients to complete a separate *FFR* (the *FFR* Attachment would not be required) for each award. Conversely, if less detailed data are needed on multiple awards, agencies should instruct recipients to complete designated lines and boxes on the *FFR* as well as the *FFR* Attachment. According to the *FFR* Instructions, an agency can require a recipient to report cash management activity for a single award and for multiple awards. In doing so, the *FFR* will capture ''Cash Receipts'' and ''Cash on Hand,'' which can be used to determine if a recipient has excess cash on hand. The *FFR* Attachment does not provide this capability.

Comment 20: Five comments indicated that the *FFR* does not capture certain data elements that currently exist within agency- or program-specific reports that have been approved by OMB. One comment requested that the final notice clarify that the *FFR* is intended to replace the SF–269, SF–269A, and SF–270 and that agencies using alternative program-specific forms could continue to do so.

Response: The *FFR* replaces the SF–269, SF–269A, SF–272 and SF–272A, and OMB-approved agency-specific and program-specific financial forms, but not the SF–270 or SF–271. The *FFR* Instructions have been clarified to state that the *FFR* is replacing the SF–269, SF–269A, SF–272, and SF–272A and, in doing so, it is now the standard government-wide financial report that all agencies and recipients will be required to use. Furthermore, the use of new or existing agency-specific or program-specific financial reports will require approval by OMB.

Comment 21: Five comments requested that the *FFR* be modified to depict ''Total Outlays,'' which would be the sum of ''Total Federal Share,'' ''Total Recipient Share,'' and ''Expended Program Income.'' Two comments requested that the *FFR* be modified to include ''Total Unliquidated Obligations,'' the sum of ''Federal Share of Unliquidated Obligations'' and ''Recipient Share of Unliquidated Obligations.''

Response: The ''Total Outlays'' and ''Total Unliquidated Obligations'' line items were not added to the *FFR* because the agencies and recipients that need this information can do so by performing simple calculations, without imposing additional requirements on all recipients.

Comment 22: One comment noted that additional fields, which are currently not required on the SF–269, may be required by agencies submitting an individual grant expenditure report, thereby increasing the overall number of data elements that must be reported. The additional data elements include the following: ''Status of Federal Cash (previous, current, cumulative),'' ''Total Federal Funds Authorized (previous, current),'' ''Total Federal Share of Unliquidated Obligations (current),'' ''Total Recipient Share Required (previous, current, cumulative),'' ''Required Recipient Share of Unliquidated Obligations (current, cumulative),'' ''Program Income Expended in Accordance with the Addition Alternative (previous, current),'' and ''Unexpended Program Income (current).''

Response: The *FFR* has been modified to only collect cumulative totals. This action eliminates Column I (Previously Reported) and Column II (Current Period) for all line items. The ''Federal

Cash'' section has been modified to include Line 10a, ''Cash Receipts;'' Line 10b, ''Cash Disbursements;'' and Line 10c, ''Cash on Hand.'' By requiring only cumulative totals, this modification will allow the *FFR* to highlight activities that took place during the reporting period and facilitate the calculation of cash on hand as of the reporting period end date. With respect to ''Total Federal Funds Authorized,'' only one entry is required in the cumulative column. Accordingly, the instructions for Line 10d have been changed to state: ''Enter the total Federal funds authorized as of the reporting period end date.'' ''Federal Share of Unliquidated Obligations,'' ''Recipient Share of Unliquidated Obligations,'' ''Program Income Expended in Accordance with the Addition Alternative,'' and ''Unexpended Program Income'' are now reported only as cumulative totals. ''Total Recipient Share Required'' was added to mirror the approach used to account for Federal dollars, while the ''Federal Expenditures and Unobligated Balance'' section begins with ''Total Federal Funds Authorized'' and depicts the manner in which authorized funds have been managed. Similarly, the ''Recipient Share'' section begins with ''Total Recipient Share Required'' and depicts the manner in which the recipient's required share is managed.

Comment 23: One comment suggested that the proposed *FFR* cannot serve as a compiled Cash Transactions Report because it does not start with ''Cash on Hand, Beginning of Reporting Period,'' as does the current SF–272. Another comment suggested an alternative method to report cash management activity for multiple awards and requested an additional column, ''Total Obligated,'' on the *FFR* Attachment. Still another comment suggested an alternative method for reporting on the financial management of an award.

Response: By requiring only cumulative totals, the *FFR* will be more useful in highlighting activity that took place during the reporting period and facilitating the calculation of cash on hand as of the reporting period end date. The alternative methods proposed to report cash and financial management activities for an award are more detailed and require more calculations by recipients than the proposed *FFR* requirements. As a result, adopting these methods would be counter to grant streamlining and improved customer service efforts.

Comment 24: One comment requested adding a data element with the name of a particular person at each agency to whom the *FFR* should be submitted. Another comment requested including the recipient's Automated Clearinghouse (ACH) account number, two comments requested including the Catalog of Federal Domestic Assistance (CFDA) number on the *FFR*, and one comment requested including a glossary and definitions in the final *FFR* notice.

Response: A data element was not added to identify a particular person at each agency to whom the report should be submitted. During the course of the reporting period for a particular award, contact points may vary and requiring recipients to provide this information prior to the submission of the *FFR* would be an undue burden. Instead, the required *FFR* identifying grant information, including the ''Federal Agency and Organizational Element to Which Report is Submitted'' (Box 1) and ''Federal Grant or Other Identifying Number'' (Box 2), is sufficient for agencies to route the *FFR* to the appropriate person. Furthermore, the *FFR* Attachment includes information on multiple awards, which would make the identification of a point of contact for each award impractical. The ACH account number was not added to the *FFR* because this report will not be used to facilitate payment or drawdown activity. As a result, including the ACH account number would be extraneous to the *FFR*'s purpose. Furthermore, the information disclosed on the ACH form is considered confidential and if included on the *FFR* would increase the risk of fraud. The CFDA number was not added to the *FFR* because it is not needed. The ''Federal Grant or Other Identifying Number Assigned by the Federal Agency'' (Box 2 of the *FFR*) and ''Federal Grant Number'' (Box 5 on the *FFR* Attachment) provide sufficient information. OMB Circulars A–102, A–110, and A–133, combined with the *FFR* Instructions, provide sufficient information to facilitate understanding and completion of the *FFR*. As such, a glossary and definition of terms are not added.

Comment 25: One comment suggested that the policy requiring the submission of one original and two copies of paper-based *FFR* submission should be retained.

Response: A statement was added that ''The Federal agency shall request that the recipient submit the original and no more than two copies of the *FFR*.''

Comment 26: One comment requested the retention of the instruction on the current SF–272 that requires an explanation when more than 3 days of cash remains on hand at the end of the reporting period. Two comments asked whether there were alternative methods for assessing excess cash, such as OMB Circular A–133 audits, rather than using the *FFR*. Another comment noted that the requirement for recipients to have no more than 3 days of cash on hand is burdensome because it is difficult to estimate the amount of money needed to meet immediate cash needs. One comment asked how recipients are expected to report on cash advances to subgrantees and subcontractors when they are unable to provide expenditure reports within the timeframe required for the recipient's *FFR* submission.

Response: A statement was added to the *FFR* Instructions requiring an explanation if more than 3 days of cash remains on hand at the end of the reporting period.

The *FFR* is one tool that agencies may use to assess the cash management and financial status of an award. As a result, agencies must determine how they wish to use this tool, in conjunction with other tools, such as OMB Circular A–133 audits and site visits. However, the *FFR* is considered to be one of the most viable tools, primarily because all recipients are not subject to OMB Circular A–133 audits and conducting site visits may be cost and resource prohibitive. Award recipients are discouraged from having more than 3 days of cash on hand in order to maximize the government's opportunity to collect interest on unspent funds and ensure compliance with the Cash Management Improvement Act. Through the use of automated processes to request funds and facilitate electronic fund transfers, recipients should be able to accurately estimate their funding needs, thereby minimizing instances in which they have more than 3 days of cash on hand. Furthermore, the management of an award does not necessarily preclude having more than 3 days of excess cash on hand; instead, it requires that the reasons for such excess be reported to ensure appropriate stewardship of Federal funds. Recipients are expected to report the amount of cash disbursed, including advances to subrecipients and subcontractors, but they are not expected to report on how these disbursements and advances were actually expended. As a result, determining subrecipient and subcontractor expenditures will not affect the timely completion and submission of the *FFR*.

Comment 27: Several comments requested clarification on the cash versus accrual basis reporting on the *FFR*. One comment indicated that the instructions for Line 10f, ''Federal Share of Unliquidated Obligations (current period),'' states: ''For accrual basis reporting, this is the amount of obligations incurred for which an expenditure has not been recorded.'' However, if an organization that accounts on an accrual basis incurred obligations for which an expenditure had not been incurred, it would need to record those expenditures and include them in its total expenditures reported on an accrual basis. The need to report on expenditures that have not been recorded should only exist in an organization that maintains its books on a cash basis. Similarly, another comment stated that it might be advisable to require that reporting be done on an accrual basis even if the organization maintains its accounting on a cash basis because the requirement on Line 10f has the effect of requiring recipients to report an accrual on the *FFR* regardless whether the accrual is actually entered on its books or only used in producing the *FFR.* Another comment stated that OMB Circular A–110 defines obligations as ''the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.'' ''Orders placed'' and ''awards'' and other obligations for ''future periods'' are not accrued, so these transactions would not be reported as unliquidated obligations. As a result, the comment requested clarification on whether these future-period obligations would be included in the ''Federal Share of Unliquidated Obligations'' and ''Recipient Share of Unliquidated Obligations.''

Response: The instructions for Line 10f have been clarified to provide one definition for ''Federal Share of Unliquidated Obligations,'' whether the recipient maintains a cash or accrual basis accounting system. The *FFR* Instructions have also been updated to indicate that, in accordance with OMB Circulars A–110 and A–102, if the Federal awarding agency requires accrual information and the recipient's accounting records are kept on the cash basis, the recipient shall not be required to convert its accounting system. Instead, the recipient must develop such accrual information through best estimates using available documentation. Consistent with the approach used to develop one definition for ''Federal Share of Unliquidated Obligations,'' regardless of whether the recipient maintains a cash or accrual basis accounting system, the *FFR* Instructions have been updated to include common definitions for Line 10e, ''Federal Share of Expenditures;'' Line10j, ''Recipient Share of Expenditures;'' and Line 10k, ''Recipient Share of Unliquidated Obligations.''

Comment 28: One comment asked why the ''Status of Federal Cash'' (Lines 10a through 10c) requires totals on a cash basis (Cash Disbursements) while the ''Status of Federal Expenditures'' (Lines 10e through 10k) require reporting on an accrual basis. Another comment stated that Box 7, ''Basis of Accounting,'' appears to apply only to Lines 10e through 10h because Lines 10a through 10c require cash basis reporting even if the recipient maintains an accrual basis accounting system. The same comment also asked how it was decided that cash or accrual accounting would be the appropriate basis for *FFR* reporting purposes.

Response: The ''Federal Cash'' portion of the *FFR* enables agencies to determine the amount of a recipient's Federal cash on hand. This portion of the report also enables agencies to reconcile their internal cash receipt and disbursement records with Federal cash receipt and disbursement records maintained by recipients. The ''Federal Expenditures and Unobligated Balance'' portion of the *FFR* enables agencies to determine, for a single award, how much money has actually been expended and the expenses that have been incurred but not yet paid. This information gives agencies an overview of the amount of encumbered and unencumbered funds, at a given point in time, which is useful when assessing the financial status of an award. Obtaining cash and accrual information serves different, yet complimentary purposes, and determining the type of information to submit is left to the discretion of the agency. The instructions for Box 7, ''Basis of Accounting,'' have been clarified to indicate that recipients should specify whether they use a cash or accrual basis accounting system for recording transactions related to the award. The form permits agencies to request cash basis information (Lines 10a through 10c and the *FFR* Attachment) from recipients maintaining an accrual basis accounting system and accrual basis information (Lines 10f and 10k) from recipients maintaining a cash basis accounting system. If the Federal awarding agency requires accrual information and the recipient's accounting records are kept on a cash basis, the recipient shall not be required to convert its accounting system. Instead, it should develop the required accrual information through best estimates based on available information.

Comment 29: One comment indicated that the *FFR* duplicates reporting now required for recipients using the Federal government's automated payment systems.

Response: The *FFR* is used to show the activity of a single award or the amount of funds expended for multiple awards. The information collected through the *FFR* is required by Federal agencies to aid in monitoring their grant funds. Conversely, payment forms are used to generate disbursements in response to a specific request, and agencies utilize multiple payment systems and forms. The information required on these diverse payment forms may not be adequate for agencies to fulfill their fiscal stewardship responsibilities. Furthermore, agencies should instruct recipients to submit the *FFR* to a single location within the agency. Each agency will then modify its internal business processes to coordinate the distribution of the *FFR* to payment and financial offices that require the information.

Comment 30: One comment asked whether using electronic payment mechanisms or receiving funds on a reimbursement basis obviate the need to account for cash disbursements by grant. Three comments questioned the usefulness of the SF–272 and, consequently, the *FFR* Attachment, given that agencies can obtain cash management information on a grant using the Payment Management System (PMS) and the Automated Standard Application for Payments (ASAP) systems.

Response: Not all electronic payment mechanisms obviate the need to account for cash disbursements by grant because all funds obtained through cash advances may not be expended immediately and agencies may want to monitor cash disbursements and, consequently, cash on hand at a given point in time. Agencies may also want to obtain cash disbursement information by grant, even for recipients on a reimbursement basis, as a means of monitoring cash disbursements for which reimbursement has not been sought. For recipients on an advance payment system and the ASAP, agencies can readily determine the amount of cash advanced but these systems do not capture the amount of cash actually disbursed by recipients. Similarly, for recipients on a reimbursement payment system and ASAP, agencies cannot capture cash disbursements for which recipients have not requested reimbursement. Moreover, not all agencies use PMS or ASAP. Cash disbursement information, as provided on the *FFR* and the optional *FFR* Attachment sections which replace the

SF–272A, is deemed useful to many agencies.

Comment 31: One comment noted that the April 8, 2003, notice in the **Federal Register** did not reference continued use of SF–270. It was suggested that the SF–270 is the source of some of the reporting problems experienced by recipients and that there is a strong relationship between the SF–270 and the new forms. The comment further indicated that the SF–270 was created to meet the need for a paper document on which recipients could request cash, when such payments were also being made by paper check. However, with the required movement by Federal agencies to payment by electronic funds transfer, the form now serves, in some agencies, as a duplicative financial reporting tool.

Response: The SF–269 and SF–272 are used to monitor the financial activity of a single award or multiple awards, while the SF–270 is used to obtain funds. These forms serve different purposes, which were considered in the development of the *FFR* proposal. Specifically, agencies are currently using various payment systems, some of which may require the submission of the SF–270 if funds cannot be requested electronically. As a result, eliminating the SF–270 through the current *FFR* proposal could have a negative effect on a recipient's ability to obtain funds, which would be an unacceptable consequence.

Comment 32: Several comments requested delaying implementation of the *FFR* until a fully automated version was available, which would provide for calculation macros, carry forward prior period-ending balances to the current period report, automate comparisons between recipient and agency data, and support electronic submissions and Web accessibility.

Response: The workgroup's primary goals included reducing the number of required financial forms and standardizing the resulting product. The *FFR* achieves these goals by consolidating four existing forms into one report and using standard data elements, instructions, definitions, reporting period end dates, and the due date for report submissions. Given the numerous benefits associated with the *FFR*, the workgroup does not want to delay its implementation. Instead, it seeks to proceed with implementation to achieve immediate benefits, while concurrently moving forward with automation initiatives. Under OMB's overall direction, the Federal awarding agencies began to address electronic solutions for financial reporting in February 2004. Those solutions include the electronic submission of the *FFR* through unified and common Federal electronic solutions. In the interim, agencies, using methods similar to those for automating the SF–269 and SF–272, may proceed, once they request and receive approval from OMB, with automating the *FFR*. This includes incorporating macros for facilitating calculations, linking the *FFR* to payment systems to facilitate electronic comparisons between recipient-reported figures and those maintained by the agency, allowing for electronic submission to agencies, and providing Web accessibility. As part of the approval request, agencies must confirm if automating the *FFR* will require either minor system enhancements or interim system improvements, and if development, modernization and enhancement (DME) funding would be necessary. These measures are not anticipated to be costly or time-intensive because the *FFR* includes only four new data elements that are not currently resident on either the SF–269 or SF–272.

Comment 33: One comment requested that the paper format of the consolidated financial report be made available so that it can be completed using a computer keyboard either in Microsoft Word or ''writeable'' PDF. The comment further stated that applicants prefer filling out documents and forms using a computer keyboard and that the old-style PDF forms are difficult to use because they must be printed and then completed using a typewriter. Another comment requested that the paper *FFR* show a Web address that would provide specific instructions and information for completing the *FFR*.

Response: As described previously, the Federal awarding agencies began addressing electronic solutions for financial reporting in February 2004, including the electronic submission of the *FFR* through unified and common Federal electronic solutions. The workgroup concluded that URL references should be included on Web sites rather than the *FFR* forms because the URL references may change.

Comment 34: One comment requested assurance that security controls be established to prevent the electronic submission of an *FFR* report that had not been approved by the appropriate individuals.

Response: Potential solutions for electronic submissions include submission and electronic authentication by an Authorized Agency Representative. In addition, existing payment systems only allow access by Authorized Agency Representatives. These agency security measures must be supplemented by the recipient's internal security measures to preclude the submission of reports by unauthorized representatives.

Comment 35: One comment stated that there is a need to ensure that subrecipients and subcontractors be subject to the same requirements as recipients for reporting purposes. Another comment noted that States serving in a pass-through capacity should also adopt the *FFR*, which would then reap the *FFR*'s benefits across the grant community. Another comment stated that the *FFR* does not contain a line item showing funds disbursed to subrecipients.

Response: The Federal government may not impose prime recipient reporting requirements on subrecipients and subcontractors as a means of securing the contractual relationship between the prime and the sub. Instead, OMB, through its administrative circulars, requires recipients to manage and monitor each project, program, function, and activity supported by the award. Furthermore, agencies may obtain information regarding the subrecipient and subcontractor aspects of an award by requiring recipients to indicate the amount of monies advanced or disbursed to subrecipients and contractors through *FFR* submissions. Requesting that States adopt the *FFR* is beyond the scope of the workgroup, but it is considered to be an area worthy of continued exploration. ''Cumulative Cash Disbursements,'' as shown in the *FFR* Attachment, include funds disbursed to subrecipients. A separate line item was not added to capture disbursements to subrecipients because, in the interest of streamlining, recipients will only be required to report disbursements without detailing specific types of expenditures.

Comment 36: One comment proposed enlarging Box 1, ''Federal Agency and Organizational Element to Which Report is Submitted;'' two comments noted the absence of instructions advising on the level to which reports should be submitted within an agency, particularly for multiple grants captured on the *FFR*; and a fourth comment stated that OMB should establish a single location for submission of the report, which would eliminate the submission of identical reports to multiple locations within an agency.

Response: The size of Box 1 was not changed because recipients may use acronyms to depict the Federal agency and organizational element. The ability to group multiple grants will be at the discretion of the Federal awarding agency. Agencies can provide guidance on identifying ''the organizational element'' for recipients reporting on multiple grants. The instructions for Box 1 have been clarified to state ''Enter the name of the Federal agency and organizational element identified in the award document or as instructed by the agency.'' Even though electronic solutions for the *FFR* are pending, some recipients may still elect to submit paper-based reports. Agencies will not be required to request submissions to one location. However, the instructions have been modified to state: ''Agencies should instruct recipients to submit the *FFR* to one single location within the agency.'' This language states that submission to one location in the agency is not required, but strongly encouraged.

Comment 37: One comment requested that Box 4 be changed from ''Universal Identifier'' to ''DUNS Number.'' Another comment asked if ''Universal Identifier'' is the DUNS Number or the Employer Identification Number (EIN).

Response: The DUNS number is the universal identifier for grants and cooperative agreements. As such, the term ''Universal Identifier Number'' has been changed to ''DUNS Number.'' Box 4 on the *FFR* has been modified to include separate entries of the ''DUNS Number'' (Box 4a) and ''Employer Identification Number (EIN)'' (Box 4b). The *FFR* Instructions have been amended to incorporate this change.

Comment 38: Several comments were raised about the requirement for recipients to provide their DUNS number. One comment requested a reference in the *FFR* Instructions on how to obtain a DUNS number, another asked what mechanism OMB intends to employ to ensure that recipients use the correct DUNS number. Still another comment requested OMB to provide guidance on how to manage multiple DUNS numbers for organizations and their affiliates. Finally, three comments expressed overall concern with the requirement to obtain a DUNS number.

Response: All of these comments pertain to pre-award activities and are outside of the scope of the *FFR* proposal. Instead, they should have been submitted in response to OMB's **Federal Register** notice dated June 27, 2003, ''Use of a Universal Identifier by Grant Applicants.'' Although these comments did not result in any changes to the *FFR*, they still warrant some clarification. Use of the DUNS will allow Federal agencies and recipients to readily identify a DUNS ''family tree,'' allowing for more effective management of multiple grants. Also, a DUNS number is required for registering in the Business Partner Network (BPN), which includes the Central Contract Registry (CCR). The BPN/CCR maintains an applicant and recipient profile, which reduces the amount of data required for electronic submission of information to Grants.gov.

Comment 39: Three comments addressed continued use of the EIN, along with the DUNS number, on the *FFR*. One comment requested that recipients furnish either the EIN or DUNS number, while another requested that the EIN be added to the *FFR*. One comment asked if the EIN was actually intended to be dropped.

Response: On June 27, 2003, an OMB notice in the **Federal Register**, ''Use of a Universal Identifier by Grant Applicants,'' established the requirement for recipients to obtain a DUNS number when applying for Federal grants and cooperative agreements. This policy has since been revised to apply to all forms of Federal financial assistance pursuant to the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282). It stipulated that Federal agencies could continue to use their EIN or similar vendor identification for their internal use. In response, the *FFR* has been modified to include both the DUNS number and EIN. The addition of the EIN to the *FFR* does not preclude furnishing a DUNS number. Instead, recipients providing an EIN (or similar vendor identification number) on the *FFR* will still be required to provide a DUNS number.

Comment 40: Two comments indicated that basic information about a recipient, including financial information, should be stored in a password protected site that recipients could access to update their information annually or when major changes occur such as the name of a contact person. After the standard application is submitted to the clearinghouse, an applicant or recipient could access the information and submit a new grant application without having to fill out another form with the same information. This practice should be possible because standard information is required with every application, but rarely changes from one application to another.

Response: These comments pertain to pre-award activity, so they are outside the scope of the *FFR* proposal. Although no changes were made to the *FFR* in response to these comments, some clarification is warranted. The Federal government is currently using BPN/CCR for grant applicants and recipients to help centralize applicant and recipient information, and to provide a central location for applicants and recipients to change organizational information. Use of BPN/CCR provides one location for applicants and recipients to change information about their organization for use by all Federal agencies. Currently, recipients will use the BPN/CCR template that is in place for vendors and contractors conducting business with the Federal government.

Comment 41: Three comments pertained to Box 5, ''Recipient Account Number or Identifying Number.'' One comment requested an example of ''any other identifying number,'' while another asked that ''For Recipient Use Only; Not Required by Federal Funding Agency'' be replaced with ''This Account Number May be the Same Number as Shown in Item 2, Federal Grant or Other Identifying Number.'' One comment suggested that Box 5 does not serve a useful purpose and it should be eliminated.

Response: As stated in the *FFR* Instructions, Box 5 is intended for recipient use only, such as providing a tracking mechanism for reconciliation purposes. For example, a recipient could assign a number to an award that is automatically generated from its financial system, which would make Box 5 very useful in reconciling the recipient's internal data with that maintained by the Federal government. The language was not modified because the proposed language better depicts the intent and appropriate use of Box 5.

Comment 42: One comment requested that the shading be removed from all the Column II, Current Period, cells because this information could be useful if the *FFR* is to be used for Current Cash Transactions.

Response: The FFR has been modified to collect only cumulative totals. This action would eliminate Column I (Previously Reported) and Column II (Current Period) for all line items. The overall financial status of the award, as shown in the ''Cumulative'' column, should serve as the basis from which assessments and decisions are made. The ''Federal Cash'' section has been modified to include Line 10c, ''Cash On Hand.'' By requiring only cumulative totals, this modification will allow the *FFR* to provide a good overview of activity that took place during the reporting period and facilitate the calculation of cash on hand as of the reporting period end date. The *FFR* Instructions have been amended to show these changes.

Comment 43: One comment suggested revising the last sentence of the instructions for Line 10, ''Transactions,'' to state: ''If you need to adjust amounts entered on previous reports, include a note in Line 12 of the Remarks section.''

Response: The statement ''If you need to adjust amounts entered on previous reports, include a note in Line 12 of the Remarks section'' has been added to the instructions for Line 10. Any information deemed necessary to support or explain *FFR* information should be noted in Line 12, ''Remarks.''

Comment 44: One comment noted that recipients are now instructed to report adjustments to prior report periods in Column I (Previously Reported). This instruction is consistent with generally accepted accounting principles, which require publicly traded corporations to report prior period adjustments as revisions to retained earnings rather than as results of current year operations. Nevertheless, the comment requests that recipients be allowed to report adjustments in the period in which they are recognized (Column II, Current Period) because the *FFR* is a cumulative document. The amount that ultimately is of interest to the agency is the amount captured in Column III (Cumulative) and an adjustment has the same effect on Column III whether the recipient enters it in Column I or Column II.

Response: The *FFR* has been modified to collect only cumulative totals. This action eliminates Column I (Previously Reported) and Column II (Current Period) for all line items. Since the practice of reflecting adjustments within the period that the error occurred is a generally accepted accounting principle, no changes will be imposed on the recipient community. If an agency has unique reporting situations requiring adjustments in the prior period, it can request an exemption from OMB.

Comment 45: One comment requested that the instructions for Line 10a be changed to read: ''Enter the amount of actual cash received to date from the Federal awarding agency.''

Response: The instructions for Line 10a, ''Cash Receipts,'' have been amended to include the requested language.

Comment 46: One comment asked if Line 10d, ''Total Federal Funds Authorized,'' includes the amount of Federal increase resulting from program income reported on Line 10o, ''Program Income Expended in Accordance with the Addition Alternative.''

Response: Line 10d, ''Total Federal Funds Authorized,'' does not include program income since, by definition, program income is generated by award activities and not provided by the awarding agency. The instructions for Line 10d have been modified to provide clarification.

Comment 47: One comment noted that recipients are given a total award amount without limitations on when those funds can be spent, other than the restrictions on the start and end dates of each award. However, the instructions for Line 10d, ''Total Federal Funds Authorized,'' request recipients to report on ''Total Federal funds authorized for the current funding period.'' This information is currently requested on SF–269 on a cumulative basis for an award, not for the current reporting period. The comment further requests that the same option be available to recipients on the FFR and that this detail be included in the line item instructions.

Response: Columns I and II for ''Total Federal Funds Authorized'' have been eliminated, requiring a cumulative total entry only. The instructions for Line 10d, ''Total Federal Funds Authorized,'' have been changed to state: ''Enter the total Federal funds authorized as of the reporting period end date.''

Comment 48: One comment noted that the instruction for Line 11e, ''Indirect Expense, Federal Share,'' should explain that this is the amount of indirect expense that has been combined with direct expenses and reported in Lines 10e, 10f, and 10g.

Response: The *FFR* instruction at Line 11e was not modified because we felt it would be clearer to the user if we modified the instructions at 10e, f and g. The *FFR* instructions at Line 10e, ''Federal Share of Expenditures,''have been modified to read: ''Expenditures are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expenses charged to the award, and the amount of cash advances and payments made to subrecipients and subcontractors, minus program income expended in accordance with the deduction alternative, rebates, refunds or other credits.'' The instructions for Line 10f, ''Federal Share of Unliquidated Obligations,'' have been modified to read: ''Unliquidated obligations reflect expenses incurred that have not yet been paid, as of the reporting period end date (cash basis), or expenses that have been incurred but not yet recorded (accrual basis). Enter the Federal portion of unliquidated obligations, which includes direct and indirect expenses incurred but not yet paid or charged to the award, including amounts due to subrecipients and subcontractors. On the final report, this line should be zero unless the awarding agency has provided specific instructions.'' The instructions for Line 10g, ''Total Federal Share,'' were not changed because Total Federal Share is the sum of Line 10e, ''Federal Share of Expenditures'' and Line 10f, ''Federal Share of Unliquidated Obligations,'' and the instructions for these two lines have been modified to reflect the treatment of indirect expenses.

Comment 49: One comment noted that it is unclear what resources are contemplated in the instructions for Line 10e, ''Federal Share of Expenditures,'' particularly the phrase ''the value of in-kind contributions applied.'' OMB's use of the term ''in-kind contributions'' in circulars and related documentation is confined to resources related to the non-Federal share and is usually modified by the term ''third-party'' to indicate that such non-cash contributions come from a party other than the Federal agency and recipient. As a result, such discussion should be included in the section of the report related to ''Status of Recipient Share.''

Response: The reference to ''the value of in-kind contributions applied'' has been removed from the definition of Line 10e, ''Federal Share of Expenditures.'' The instructions for Line 10j, ''Recipient Share of Expenditures,'' have been clarified to state: ''This amount may include the value of allowable in-kind match contributions * * *.''

Comment 50: One comment stated that the sentence ''Do not include any amounts on Line 10f that have been included on Line 10e'' in the current SF–269 instructions for reporting unliquidated obligations has been dropped from the *FFR* Instructions for Lines 10f and 10k. This sentence is needed to control against ''double dipping.''

Response: The instructions for Line 10f have been clarified to state: ''Do not include any amount in Line 10f that has been reported in Line 10e.'' Also, the instructions for Line 10k have been clarified to state: ''Do not include any amount in Line 10k that has been reported in Line 10j.''

Comment 51: One comment indicated that the instructions for Line 10i, ''Total Recipient Share Required,'' on the new *FFR* requests recipients to report on total recipient share required by reporting period, yet some awards require recipients to agree to a specific match for the entire grant period, which means that recipients would be able to report their required share only on a cumulative basis, rather than on a period-by-period basis. Another comment asked if the recipient share to be provided relates only to mandatory cost sharing amounts or if it also included committed cost sharing. A similar comment requested clarification for Lines 10i through 10m to show that the terms ''recipient share'' and ''recipient funds'' include all matching and cost sharing funds that have been committed to the project by the recipient and other providers. A fourth comment asked whether the amount reported on Line 10i includes level of effort requirements.

Response: The *FFR* has been modified to collect only cumulative totals. This action eliminates Column I (Previously Reported) and Column II (Current Period) for all line items. The instructions for Line 10i, ''Total Recipient Share Required,'' have been amended to state: ''Enter the total required recipient share for budget, funding, and project periods. The required recipient share to be provided includes all matching and cost sharing provided by recipients and third-party providers to meet the level required by the Federal agency. This amount should not include cost sharing and match amounts in excess of the amount required by the Federal agency (such as cost overruns for which the recipient incurs additional expenses and, therefore, contributes a greater level of cost sharing or matching than the level required by the Federal agency).''

Comment 52: One comment indicated that the current long version of SF–269 allows the agency to break the recipient's share of outlays into in-kind and cash matches, while the proposed *FFR* combines in-kind and cash match totals and reports them as one figure on Line 10i, ''Total Recipient Share Required.'' The comment further asked that the *FFR* be revised to show a break in the recipient's share between in-kind and cash matches. Another comment suggested using the term ''mandatory'' cost sharing instead of recipient's share, while another comment asked that the word ''required'' used in front of ''recipient funds'' and ''match or cost sharing amount'' be deleted because the match actually received may be different than what was committed.

Response: Since documentation requirements for third-party and in-kind contributions and cash matches are virtually the same, no purpose would be served by differentiating between the two on the *FFR*. If an agency wants to obtain this information, it may do so through progress reporting mechanisms. Recipients may not universally understand the terms ''mandatory'' and ''committed'' in reference to cost sharing. As such, introducing these terms may result in greater confusion than the term ''required recipient share,'' which is currently used. The word ''required'' was not removed from the line item instructions because it ensures a correct, mutual understanding between the recipient and the agency regarding the precise amount of match required against the funds awarded. The match or cost sharing reported may be different from the required amount, but the amount required has significance for this report because adjustments can be made prior to or during closeout to reconcile differences between actual cost sharing amounts and the amount required by the Federal agency.

Comment 53: One comment requested that the phrases—(current period only) and (This period)—be removed from Line 10k, ''Recipient Share of Unliquidated Obligations.'' The shaded and unshaded cells for each line item are sufficient for determining the period of time for which the information needs to be reported. As a result, (current period only) and (This period) are redundant.

Response: The two phrases were not on Line 10k of the form but were in the instructions for Line 10k. The two phrases have been removed from the instructions. The *FFR* has been modified to collect only cumulative totals. The instructions for Line 10k now state: ''Unliquidated obligations reflect expenses incurred that have not yet been paid, as of the reporting period end date. Enter the recipient's portion of unliquidated obligations which includes direct and indirect expenses incurred but not yet paid or charged to the award, including amounts due to subrecipients and subcontractors.''

Comment 54: One comment stated that the proposed form includes a new line item, Line 10m, ''Remaining Recipient Share to be Provided,'' that requires the total recipient share less the total recipient share disbursed and obligated leaving the remaining recipient share to be provided. The comment further indicated that this information is not useful because the recipient frequently does not spend the entire grant award, so it does not need to provide the entire match shown in the grant award.

Response: Even if the entire amount of the award is not spent, the information on Line 10m enables the Federal agency to readily view required and actual recipient share activity and make necessary adjustments prior to or at time of closeout. The information also provides a valuable tool for agencies to assess the sufficiency of the recipient's contributions throughout the project or grant period, enabling agencies to monitor awards, identify deficiencies, and make adjustments, as necessary.

Comment 55: One comment indicated that the *FFR* does not address the three methods in which program income can be treated. Two comments requested a separate line item for identifying program income that is used to finance the non-Federal share of the project.

Response: The *FFR* and instructions capture the three ways in which program income can be treated. Specifically, Line 10o is used for program income expended in accordance with the deduction alternative; Line 10p is used for program income expended in accordance with the addition alternative; and Line 10j may include program income expended to meet the recipient's share of the program or project. A separate line item for program income used to finance the recipient's share is not necessary because the instructions for Line 10j state: ''This amount may include the value of allowable in-kind match contributions and recipient share of program income used to finance the non-Federal share of the project or program.''

Comment 56: One comment asked whether it would be better to include a question or a pair of boxes to be checked on whether the award in question requires the use of the deduction or the addition alternative. Alternatively, if the award does not include such a provision, indicate whether the recipient should be required to choose one or the other. The form would then be arranged so that if the deduction alternative were indicated, the Federal share of expenditures would be shown in total and the amount of program income would be deducted from the total to arrive at a net, which the federal government would need to reimburse. If the addition alternative were indicated, the recipient would then demonstrate the total program income earned, the total spent on costs of the program, and the amount not used.

Response: The *FFR* was not modified to ask a question or show boxes indicating whether the deduction or addition method for program income was used because the method used to account for program income should be evident by virtue of the line items completed by the recipient. It should also be noted that if the award is silent with respect to the treatment of program income, the recipient *does not* have the option of choosing the method to be utilized. Instead, it is the agency's decision regarding which method is used to account for program income and, if applicable, the expenditure of program income. The instructions for Lines 10e and 10o have been modified in response to the portion of the comment regarding the manner in which program income, utilizing the deduction alternative, is reported. The instruction for Line 10e states: ''Enter the amount of Federal fund expenditures. Expenditures are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expenses charged to the award, and the amount of cash advances and payments made to subrecipients and subcontractors, minus program income expended in accordance with the deduction alternative, rebates, refunds, or other credits.'' Program Income expended in accordance with the deduction alternative should be reported separately on Line 10o. The instructions for Line 10o state: ''Enter the amount of program income that was used to reduce the Federal share of the total project costs.'' No change was made regarding the depiction of program income utilizing the addition alternative because the current proposal presents the amount expended and unexpended without requesting extraneous information.

Comment 57: Two comments requested that two phrases—(current period) and (This Period)—be removed from Line 10p,—''Unexpended Program Income,'' because the shaded and unshaded cells for each line item are sufficient for determining for what period of time the information needs to be reported. As such, (current period) and (This Period) are redundant.

Response: The phrase (This Period) appeared in the instructions for Line 10p but not on Line 10p of the form. The phrase (current period) appeared on Line 10p of the form. The phrase (current period only) appeared in the instructions for Line 10p. These phrases have been removed from the instructions of the form. The *FFR* has been modified to collect only cumulative totals. The instructions for Line 10q now state: ''Enter the amount of Line 10n minus Line 10o on Line 10p. This is the amount of program income that has been earned but not expended, as of the reporting period end date.''

Comment 58: One comment indicated that the instructions should include a title line for indirect expense; otherwise, it appears that indirect expense falls under program income.

Response: The *FFR* section for Indirect Expense has not been modified because the separate line number and block formatting of the section makes it stand out from the preceding section.

Comment 59: One comment requested that Box 11a, ''Indirect Expense, Type of Rate,'' be amended by changing the term ''Fixed'' to ''Fixed with Carry-Forward'' to conform to current practices used by Federal agencies. Another comment requested that definitions be provided for the types of rate identified in Box 11a (provisional, predetermined, final, or fixed).

Response: The *FFR* has not been modified because the terminology ''Fixed'' is currently used in OMB Circulars. Also, the type of indirect expense rate should be identified in the negotiated indirect cost rate agreement with the Federal agency or identified in the grant agreement. Definitions for each type of rate were not added to the *FFR* because at this post-award phase of the award cycle, recipients should already be aware of their indirect cost rates and their meanings. If recipients need additional information on indirect cost rates, they should consult the cognizant agency or OMB cost principles circulars.

Comment 60: One comment requested that the instructions for Line 11b, ''Indirect Expense Rate,'' should be revised to state: ''Enter the actual approved rate in effect during this reporting period. This rate should be contained in the grant agreement or otherwise negotiated.'' Two comments requested that guidance be added to the instructions for Line 11b advising recipients on how to complete the *FFR* when multiple indirect cost rates apply to the reporting period.

Response: The *FFR* instructions have been modified to state ''Enter the indirect cost rate in effect during the reporting period. This rate should be contained in the grant agreement or agreement negotiated with the cognizant federal agency.''

Comment 61: One comment asked whether the amount reported in Box 11e, ''Indirect Expense, Federal Share,'' was also included in Line 10e, ''Federal Share of Expenditures,'' and Line 10f, ''Federal Share of Unliquidated Obligations.''

Response: The *FFR* instructions have been modified to explain that the amount of indirect expense is combined with the Federal share of direct expenses and is to be reported on Lines 10e and 10f.

Comment 62: One comment noted that the language associated with Box 13, ''Certification,'' does not convey that civil or criminal penalties exist for making a knowingly false statement or willful misrepresentation in regards to the reported information including cash receipts and disbursements, and expenditures and unliquidated obligations. Including such a certification would ensure that recipients are aware of their responsibilities and provide a stronger basis for the Federal government to take legal action if recipients knowingly make a false certification or willful misrepresentation. Another comment indicated that the instructions should state who qualifies as an ''authorized certifying official.'' Still another comment asked that the instructions for Box 13e, ''Date Report Submitted,'' prescribe the date format to be used (for example, month, day, year).

Response: Determining who qualifies as an ''authorized certifying official'' should be made by the recipient, not the Federal agency. In general, the ''authorized certifying official'' has the authority to commit the recipient to a course of action and agreement, and ensure compliance with that action and agreement. The *FFR* has been modified to specify a date format and instructions for Box 13e have been modified to state: ''Enter the date the *FFR* is submitted to the Federal agency in the format of month, day, year.''

Comment 63: One comment requested that Box 2, ''Federal Grant or Other Identifying Number Assigned by the Federal Agency,'' also ask for the name of the Federal grant. A second comment asked that the legal name of the recipient be provided in Box 3, ''Recipient Organization,'' while a third comment asked that the agency be identified on the *FFR.* A fourth comment asked that the recipient's fax number be provided on the *FFR.*

Response: Box 2 is intended for the award number or other identifying number that the Federal awarding agency assigns to the grant or cooperative agreement. This unique number precludes the need to ask recipients to provide additional identifying information, such as the name of the grant program. In addition, the recipient's legal name and fax number should be obtained in the pre-award phase, if that information is pertinent. There is no need to impose an undue burden on recipients by requesting this information again during the reporting phase.

Comment 64: One comment requested that the instructions for Box 8, ''Project/Grant Period,'' and Box 9, ''Period Covered by the Report,'' be clarified to indicate that the two reporting periods may not agree since awards are sent out late and project activities are often not completed by the project or grant period end date. Another comment asked that the instructions for Box 9 be revised to state: ''Enter beginning and ending dates of the current reporting period * * *.''

Response: The first comment most likely pertains to the submission of final *FFRs,* in which case the ''Reporting Period End Date'' (Box 9) end date should be the same as the ''Project/Grant Period'' (Box 8) end date. If project activities are not completed by the project or grant period end date, then the recipient should request an extension. If the extension is approved, the project or grant period end date (Box 8) would be extended and the reporting period end date (Box 9) on the final *FFR* would be the same as the extended project or grant period end date. The instructions for Box 9 have been revised to state: ''Enter the ending date of the reporting period.''

Comment 65: One agency stated that the existing financial reporting forms are not inherently burdensome, but they often become so because of misuse and misinterpretation of their instructions by some Federal agencies. One comment indicated that the current SF–269 and SF–272 function well on their own since the recipients for each report are distinct and the combined *FFR* merely combines the information requested on the current forms into one form, which does not decrease the amount of time required to submit financial data. Another comment indicated that several opportunities for streamlining were missed. They included eliminating interim financial status reports and relying on nearly identical data submitted quarterly on the Federal Cash Transactions Report, reducing the frequency with which agencies may require reports, and standardizing reporting requirements like those for outstanding obligations and carry forward of unobligated balances. One comment asked whether a standardized report comparing budgets to actual expenditures will be required or will this function continue to be left to individual program officials.

Response: Four individual financial reports have been combined into one *FFR* with standardized informational reporting requirements. Agencies may require recipients to provide all of the information included on the *FFR,* but no agency can require recipients to provide additional information, without approval from OMB. The *FFR* allows for flexibility in the frequency of reporting, but it establishes uniform reporting period end dates and uniform due dates for the submission of interim reports. Furthermore, the *FFR* Instructions provide clarification and standardization with respect to reporting on the cash management activity and financial status of single or multiple awards. Use of the *FFR* and its instructions across the government will minimize instances of misuse and misinterpretation. Some recipients currently complete the SF–269; others complete the SF–272, while others complete both forms, depending on agency reporting requirements. These forms serve both distinct and overlapping populations. As such, having an *FFR* that encompasses both financial status activity (currently resident on the SF–269) and cash management activity (the SF–272) allows agencies to preserve reporting flexibilities while serving distinct and overlapping populations with one form. Furthermore, completing the *FFR* reduces the number of data elements that are currently required on the current SF–269 and SF–272. Interim *FFRs* were not eliminated because the information submitted on those reports depicts information that does not appear on the Federal Cash Transaction Report. Many agencies need that information during interim timeframes throughout the project or grant period to adequately monitor the financial status of their awards. The frequency with which agencies may require submission of *FFRs* remains flexible because their needs differ in terms of the related risks associated with a particular program or award. The scope of the *FFR* proposal was not designed to address an agency's internal policies regarding financial management of grant and cooperative agreement funds, nor was it designed to be used as a tool to compare budgets to actual expenditures. Instead, the *FFR* provides a standardized format through which recipients report on the cash management and financial status of grants and cooperative agreements in accordance with each agency's existing internal policies.

Comment 66: One comment indicated that the proposed change does not contain information about OMB's plans to revise Circulars A–102 and A–110. Those circulars prescribe the use of the current forms that would be replaced by the *FFR.*

Response: OMB issued the proposed revisions to Circulars A–102 and A–110 as a way of initiating changes associated with several government-wide grant streamlining initiatives.

III. Paperwork Reduction Act

Submission for OMB Review; Comment Request.

Title: Federal Financial Report (*FFR*).

OMB No.: New Collection.

Description: In furtherance of Public Law 106–107, and its goal of streamlining the Federal grant process, the Federal Financial Report (*FFR*) will reduce the burden and reporting effort on recipients by consolidating four forms into one. The purpose of the *FFR* is to give recipients of grants and cooperative agreements a standard format for reporting the financial status of their grants and cooperative agreements (hereby referred to collectively as awards).

Respondents: Federal agencies and their assistance recipients.

Estimated Total Annual Burden Hours: 2.00.

Estimated Cost: There is no expected cost to the respondents or to OMB.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Federal Financial Report (FFR)	1	1	1.50	1.50
Federal Financial Report (FFR) Attachment	1	1	0.50	0.50
Total				2.00

Agencies and the public are asked to comment on:

- Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- The accuracy of the agency's estimate of the burden of the collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

IV. Summary of Actions

OMB, through this **Federal Register** publication, is establishing the government-wide *FFR*. The *FFR* provides a standard format from which agencies can determine data elements that recipients must complete to report on the cash management and financial status of single or multiple awards. Consistent with government-wide grant streamlining objectives, the *FFR* will result in the use of standard reporting period end dates and due dates for the submission of cash management and financial information.

This establishment of the government-wide *FFR* requires amendments to OMB Circulars A–110 (2 CFR part 215) and A–102. Those amendments will be published under a separate notice. We also recognize that a transition period will be necessary to provide agencies and grantees with time to adapt their processes to the new form and phase out the use of old ones. When the *FFR* is approved by OMB, the SF–269, SF–269A, SF–272 and SF–272A may continue to be accepted by agencies until September 30, 2008. Agencies must determine the earliest practical time that their recipients will transition to using the *FFR* on or before September 30, 2008.

Danny Werfel,

Acting Controller.

Attachments

BILLING CODE 3110–01–P

FEDERAL FINANCIAL REPORT

(Follow form instructions)

1 Federal Agency and Organizational Element to Which Report is Submitted	2. Federal Grant or Other Identifying Number Assigned by Federal Agency (To report multiple grants, use FFR Attachment)	Page 1	of pages

3 Recipient Organization (Name and complete address including Zip code)

4a DUNS Number	4b EIN	5 Recipient Account Number or Identifying Number (To report multiple grants, use FFR Attachment)	6. Final Report ☐ Yes ☐ No	7 Basis of Accounting ☐ Cash ☐ Accrual

8 Project/Grant Period From (Month, Day, Year)	To (Month, Day, Year)	9 Reporting Period End Date (Month, Day, Year)

10. **Transactions**	Cumulative
(Use lines a-c for single or multiple grant reporting)	
Federal Cash (To report multiple grants, also use FFR Attachment):	
a Cash Receipts	
b Cash Disbursements	
c Cash on Hand (line a minus b)	
(Use lines d-q for single grant reporting)	
Federal Expenditures and Unobligated Balance:	
d Total Federal funds authorized	
e Federal share of expenditures	
f. Federal share of unliquidated obligations	
g Total Federal share (sum of lines e and f)	
h. Unobligated balance of Federal funds (line d minus g)	
Recipient Share:	
i Total recipient share required	
j Recipient share of expenditures	
k Recipient share of unliquidated obligations	
l Total recipient share (sum of lines j and k)	
m Remaining recipient share to be provided (line i minus l)	
Program Income:	
n Total Federal program income earned	
o Program income expended in accordance with the deduction alternative	
p Program income expended in accordance with the addition alternative	
q Unexpended program income (line n minus line o or line p)	

11 Indirect Expense	a Type of Rate *(Place "X" in appropriate box)* ☐ Provisional	☐ Predetermined	☐ Final	☐ Fixed
	b Rate.	c Base	d Total Amount	e. Federal Share:

12. *Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation:*

13. Certification: I certify to the best of my knowledge and belief that this report is correct and complete and that all expenditures and unliquidated obligations are for the purposes set forth in the award documents.

a Typed or Printed Name and Title of Authorized Certifying Official	c Telephone (Area code, number and extension)
	d Email address
b. Signature of Authorized Certifying Official	e Date Report Submitted (Month, Day, Year)
	14. Agency use only:

Prescribed by OMB A-102 and A-110

OMB Approval Number

Public reporting burden for this collection of information is estimated to average 90 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503

FEDERAL FINANCIAL REPORT ATTACHMENT

(For reporting multiple grants)

1 Federal Agency and Organizational Element to Which Report is Submitted (Box 1 on Page 1)	2 Recipient Organization (Box 3 on Page 1)	
3a DUNS Number (Box 4a on Page 1) 3b EIN (Box 4b on Page 1)	4 Reporting Period End Date (Box 9 on Page 1) (Month, Day, Year)	Page ________ of ________

5 List Information below for each grant covered by this report Use additional pages if more space is required

Federal Grant Number	Recipient Account Number	Cumulative Cash Disbursement
		$
TOTAL (Should correspond to the amount on Line 10b on Page 1)		$

Prescribed by OMB A-102 and A-110

OMB Approval Number

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503

Federal Financial Report Instructions

Report Submissions

1) Recipients will be instructed by Federal agencies to submit the Federal Financial Report (FFR) to a single location within the agency.
2) If recipients need more space to support their *FFR*s, or *FFR* Attachments, they should provide supplemental pages. These additional pages must indicate the following information at the top of each page: Federal grant or other identifying number (if reporting on a single award), recipient organization, Data Universal Numbering System (DUNS) number, Employer Identification Number (EIN), and period covered by the report.

Reporting Requirements

1) The submission of interim *FFR*s will be on a quarterly, semi-annual, or annual basis as directed by the Federal agency unless more frequent reporting is prescribed by statute and/or consistent with provisions in OMB Circular A-102 or OMB Circular A-110 (2 CFR 215). A final FFR shall be submitted at the completion of the award agreement. The following reporting period end dates shall be used for interim reports: 3/31, 6/30, 9/30, or 12/31. For final *FFR*s, the reporting period end date shall be the end date of the project or grant period.
2) Quarterly, semi-annual, and annual interim reports are due 45 days after the end of the reporting period. Final reports are due no later than 90 days after the project or grant period end date. Extensions of reporting due dates may be approved by the Federal agency upon request by the recipient.
3) For a particular award, agencies may require cash management reporting more or less frequently than financial status reporting. Alternatively, agencies may request, for a particular award, the submission of *FFR*s at a given reporting interval (e.g., quarterly) to reflect cash management activity and a separate *FFR* at a different reporting interval (e.g., annually) to reflect financial status activity.
4) The Federal agency shall request that the recipient submit the original and no more than two copies of the FFR.

Note: For single award reporting, Federal agencies may require both cash management information on lines 10(a) through 10(c) and financial status information lines 10(d) through 10(q).

Line Item Instructions for the Federal Financial Report

FFR Number	Reporting Item	Instructions
Cover Information		
1	Federal Agency and Organizational Element to Which Report is Submitted	Enter the name of the Federal agency and organizational element identified in the award document or as instructed by the agency.
2	Federal Grant or Other Identifying Number Assigned by Federal Agency	For a single award, enter the grant number assigned to the award by the Federal agency. For multiple awards, report this information on the *FFR* Attachment. *Do not complete this box if reporting on multiple awards.*
3	Recipient Organization	Enter the name and complete address of the recipient organization including zip code.
4a	DUNS Number	Enter the recipient organization's Data Universal Numbering System (DUNS) number or Central Contract Registry extended DUNS number.
4b	EIN	Enter the recipient organization's Employer Identification Number (EIN).
5	Recipient Account Number	Enter the account number or any other identifying number assigned by the

FFR Number	Reporting Item	Instructions
	or Identifying Number	recipient to the award. This number is for the recipient's use only and is not required by the Federal agency. For multiple awards, report this information on the *FFR* Attachment. *Do not complete this box if reporting on multiple awards.*
6	Final Report (Yes/No)	Mark appropriate box. Check "yes" only if this is the final report for the project or grant period specified in Box 8. *Do not complete this box if reporting on multiple awards.*
7	Basis of Accounting (Cash/Accrual)	Specify whether a cash or accrual basis was used for recording transactions related to the award(s). Accrual basis of accounting refers to the accounting method in which expenses are recorded when incurred. For cash basis accounting, expenses are recorded when they are paid. Note: Agencies may request cash basis information (Lines 10a through 10c and *FFR* Attachment) from recipients maintaining an accrual basis accounting system. Also, agencies may request accrual basis information (Lines 10f and 10k) from recipients maintaining a cash basis accounting system. Recipients are not required to change their accounting systems to accommodate agency requests that differ from their underlying accounting practices. Instead, recipients must furnish the requested information based on available documentation and best estimates.
8	Project/Grant Period, From: (Month, Day, Year)	Indicate the period established in the award document during which Federal sponsorship begins and ends. Note: Some agencies award multi-year grants for a project period that is funded in increments or budget periods (typically annual increments). Throughout the project period, agencies often require cumulative reporting for consecutive budget periods. Under these circumstances, enter the beginning and ending dates of the project period not the budget period. *Do not complete this line if reporting on multiple awards.*
	Project/Grant Period,To: (Month, Day, Year)	See the above instructions for "Project/Grant Period, From: (Month, Day, Year)."
9	Reporting Period End Date: (Month, Day, Year)	Enter the ending date of the reporting period. For quarterly, semi-annual, and annual interim reports, use one of the following reporting period end dates: 3/31, 6/30, 9/30, or 12/31. For final *FFR*s, the reporting period end date shall be the end date of the project or grant period.
10	**Transactions** Enter cumulative amounts from date of the inception of the award through the end date of the reporting period specified in line 9. Use Lines 10a through 10c, Lines 10d through 10q, or Lines 10a through 10q, as specified by the Federal agency, when reporting on single grants. Use Line 12, Remarks, to provide any information deemed necessary to support or explain *FFR* data. If you need to adjust amounts entered on previous reports, include a note in Line 12 of the Remarks section.	

FFR Number	Reporting Item	Instructions
Federal Cash (To report multiple grants, also use FFR Attachment)		
10a	Cash Receipts	Enter the amount of actual cash received to date from the Federal awarding agency.
10b	Cash Disbursements	Enter the cumulative amount of Federal fund disbursements (such as cash or checks) as of the reporting period end date. Disbursements are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expenses charged to the award, and the amount of cash advances and payments made to subrecipients and subcontractors. For multiple grants, report each grant separately on the *FFR* Attachment. The sum of the cumulative cash disbursements on the *FFR* Attachment must equal the amount entered on Line 10b, *FFR*.
10c	Cash On Hand (Line 10a Minus Line 10b	Enter the amount of Line 10a minus Line 10b. This amount represents immediate cash needs. If more than three business days of cash are on hand, the Federal agency may require an explanation on Line 11, Remarks, explaining why the drawdown was made prematurely or other reasons for the excess cash.
Federal Expenditures and Unobligated Balance: Do not complete this section if reporting on multiple awards.		
10d	Total Federal Funds Authorized	Enter the total Federal funds authorized as of the reporting period end date. (This amount does not include program income.)
10e	Federal Share of Expenditures	Enter the amount of Federal fund expenditures. Expenditures are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expenses charged to the award, and the amount of cash advances and payments made to subrecipients and subcontractors *minus* program income expended in accordance with the deduction alternative, rebates, refunds, or other credits. Program income expended in accordance with the deduction alternative should be reported separately on Line 10o.
10f	Federal Share of Unliquidated Obligations	Unliquidated obligations reflect expenses incurred that have not yet been paid, as of the reporting period end date (cash basis), or expenses that have been incurred but not yet recorded (accrual basis). Enter the Federal portion of unliquidated obligations, which includes direct and indirect expenses incurred but not yet paid or charged to the award, including amounts due to subrecipients and subcontractors. On the final report, this line should be zero unless the awarding agency has provided specific instructions. *Do not include any amount in Line 10f that has been reported in Line 10e. Do not include any amount in Line 10f for a future commitment of funds (such as a long-term contract) for which an obligation or expense has not been incurred.*
10g	Total Federal Share (Sum of Lines 10e and 10f)	Enter the sum of Lines 10e and 10f.
10h	Unobligated Balance of Federal Funds (Line 10d Minus Line 10g)	Enter the amount of Line 10d minus Line 10g.
Recipient Share: Do not complete this section if reporting on multiple awards.		

FFR Number	Reporting Item	Instructions
10i	Total Recipient Share Required	Enter the total required recipient share for reporting period specified in line 9. The required recipient share should include all matching and cost sharing provided by recipients and third-party providers to meet the level required by the Federal agency. This amount should not include cost sharing and match amounts in excess of the amount required by the Federal agency (for example, cost overruns for which the recipient incurs additional expenses and, therefore, contributes a greater level of cost sharing or match than the level required by the Federal agency).
10j	Recipient Share of Expenditures	Enter the recipient share of actual cash disbursements or outlays (less any rebates, refunds, or other credits) including payments to subrecipients and subcontractors. This amount may include the value of allowable in-kind match contributions and recipient share of program income used to finance the non-Federal share of the project or program. Note: On the final report this line should be equal to or greater than the amount of Line 10i.
10k	Recipient Share of Unliquidated Obligations	Unliquidated obligations reflect expenses incurred that have not yet been paid, as of the reporting period end date. Enter the recipient's portion of unliquidated obligations which includes direct and indirect expenses incurred but not yet paid or charged to the award, including amounts due to subrecipients and subcontractors. *Do not include any amount in Line 10k that has been reported in Line 10j. Do not include any amount in Line 10k for a future commitment of funds (such as for a long-term contract) for which an obligation or expense has not been incurred.*
10l	Total Recipient Share (sum of Lines 10j and 10k)	Enter the sum of Lines 10j and 10k. Note: Recipient share may exceed the required match amount as stated in Line 10i.
10m	Remaining Recipient Share to be Provided (Line 10i Minus Line10l)	Enter the amount of Line 10i minus Line 10l. If recipient share in Line 10l is greater than the required match amount in Line 10i, enter zero.
Program Income: Do not complete this section if reporting on multiple awards.		
10n	Total Federal Program Income Earned	Enter the amount of Federal program income earned. Since recipient's share of program income is included in 10j, do not included program income authorized to be used for the recipient's share of the program income.
10o	Program Income Expended in Accordance With the Deduction Alternative	Enter the amount of program income that was used to reduce the Federal share of the total project costs.
10p	Program Income Expended in Accordance With the Addition Alternative	Enter the amount of program income that was added to funds committed to the total project costs and expended to further eligible project or program activities.
10q	Unexpended Program Income (Line 10n Minus Line 10o or Line 10p)	Enter the amount of Line 10n minus Line 10o or Line 10p. This amount equals the program income that has been earned but not expended, as of the reporting period end date.
11	**Indirect Expense:** Complete this information only if required by the awarding agency and in accordance with agency instructions.	

FFR Number	Reporting Item	Instructions
11a	Type of Rate	Self-explanatory.
11b	Rate	Enter the indirect cost rate in effect during the reporting period. This rate should be contained in the grant agreement or agreement negotiated with the cognizant federal agency.
11c	Base	Enter the amount of the base against which the rate was applied.
11d	Total Amount	Enter the total amount of indirect costs charged during the reporting period.
11e	Federal Share	Enter the Federal share of the amount in 11d.
Remarks, Certification, and Agency Use Only		
12	Remarks	Enter any explanations or additional information required by the Federal sponsoring agency including excess cash as stated in line 10c
13a	Typed or Printed Name and Title Of Authorized Certifying Official	Enter the name and title of the authorized certifying official.
13b	Signature of Authorized Certifying Official	The authorized certifying official must sign here.
13c	Telephone (Area Code, Number and Extension)	Enter the telephone number (including area code and extension) of the individual listed in Line 12a.
13d	E-mail Address	Enter the e-mail address of the individual listed in Line 12a.
13e	Date Report Submitted (Month, Day, Year)	Enter the date the *FFR* is submitted to the Federal agency in the format of month, day, year.
14	Agency Use Only	This section is reserved for Federal agency use.

Line Item Instructions for the Federal Financial Report Attachment

(To be completed if reporting on cash management activity for multiple grants.)

Box Number	Reporting Item	Instructions
1	Federal Agency and Organizational Element to Which Report is Submitted	Enter the name of the Federal agency and organizational element identified in the award document or otherwise instructed by the agency. (This information should be identical to that entered in Box 1, *FFR.*)
2	Recipient Organization	Enter the name and complete address of the recipient organization including zip code. (Same information as entered in Box 3, *FFR.*)
3a	DUNS Number	Enter the recipient organization's Data Universal Numbering System (DUNS) number or Central Contract Registry extended DUNS number. (Same information as entered in Box 4a, *FFR.*)
3b	EIN	Enter the recipient organization's Employer Identification Number (EIN). (Same information as entered in Box 4b, *FFR.*)
4	Reporting Period End Date: (Month, Day, Year)	Enter the ending date of the reporting period of this report. (Same information as entered in Box 9, *FFR.*)
5	Federal Grant Number	Enter the grant number assigned to each award by the Federal agency.
	Recipient Account Number	Enter the account number or any other identifying number assigned by the recipient to each award. This number is for the recipient's use only and is not required by the Federal agency.
	Cumulative Cash Disbursement	Enter the cumulative amount of the Federal share of cash disbursed for each award. Cash disbursements are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expenses charged to the award, and the amount of cash advances and payments made to subrecipients and subcontractors.
	Total	Enter the total for the Cumulative Cash Disbursement. This column should equal the amount reported on Line 10b, *FFR.*

[FR Doc. 07–5941 Filed 12–6–07; 8:45 am]
BILLING CODE 3110–01–C

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: C. Penn, Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between October 1, 2007, and October 31, 2007. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for October 2007.

Schedule B

No Schedule B appointments were approved for October 2007.

Schedule C

The following Schedule C appointments were approved during October 2007.

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS70031 Executive Assistant to the Associate Director for Natural Resource Programs. Effective October 11, 2007.

Office of National Drug Control Policy

QQGS70016 Legislative Assistant to the Associate Director Office of Legislative Affairs. Effective October 19, 2007.

Office of the United States Trade Representative

TNGS70008 Deputy Assistant United States Trade Representative for Congressional Affairs to the Assistant United States Trade Representative for Congressional Affairs. Effective October 03, 2007.

Section 213.3304 Department of State

DSGS61264 Special Assistant to the Director, Policy Planning Staff. Effective October 02, 2007.
DSGS61263 Special Assistant to the Assistant Secretary for Democracy Human Rights and Labor. Effective October 10, 2007.
DSGS61260 Staff Assistant to the Ambassador-At-Large (War Crimes). Effective October 11, 2007.
DSGS61262 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 16, 2007.
DSGS61265 Senior Advisor to the Secretary of State. Effective October 26, 2007.

Section 213.3306 Department of Defense

DDGS17113 Staff Assistant to the Deputy Assistant Secretary of Defense (Western Hemisphere Affairs). Effective October 02, 2007.
DDGS17117 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective October 03, 2007.
DDGS17108 Staff Assistant to the Principal Deputy to the Deputy Under Secretary of Defense (Asian and Pacific Security Affairs). Effective October 09, 2007.
DDGS17095 Staff Assistant for Correspondence to the Special Assistant to the Secretary and Deputy Secretary of Defense. Effective October 11, 2007.

Section 213.3310 Department of Justice

DJGS00067 Chief of Staff to the Assistant Attorney General, Office of Justice Programs. Effective October 02, 2007.
DJGS00229 Public Affairs Specialist to the Director, Office of Public Affairs. Effective October 10, 2007.

Section 213.3311 Department of Homeland Security

DMGS00717 Special Assistant to the Assistant Secretary for Private Sector. Effective October 03, 2007.
DMGS00719 Confidential Assistant to the White House Liaison. Effective October 11, 2007.
DMGS00721 Confidential Assistant to the Executive Secretary. Effective October 11, 2007.
DMGS00722 Advisor to the Executive Officer. Effective October 17, 2007.
DMGS00720 Confidential Assistant to the Chief of Staff. Effective October 24, 2007.
DMGS00724 Advisor to the Assistant Secretary for Policy. Effective October 31, 2007.

Section 213.3312 Department of the Interior

DIGS01109 Associate Director—Congressional and Legislative Affairs to the Director, Congressional and Legislative Affairs. Effective October 16, 2007.
DIGS01108 Special Assistant for Public Affairs to the Director, Take Pride In America. Effective October 24, 2007.
DIGS01110 Chief of Staff to the Director Minerals Management Service. Effective October 25, 2007.

Section 213.3313 Department of Agriculture

DAGS00921 Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective October 03, 2007.
DAGS00917 Special Assistant to the Under Secretary for Natural Resources and Environment. Effective October 11, 2007.
DAGS00922 Associate Administrator to the Administrator, Rural Housing Service. Effective October 11, 2007.
DAGS00924 Staff Assistant to the Administrator for Risk Management. Effective October 29, 2007.

Section 213.3314 Department of Commerce

DCGS00684 Director for Speechwriting to the Director of Public Affairs. Effective October 04, 2007.
DCGS00353 Confidential Assistant to the Assistant Secretary and Director General of United States/For Commercial Services. Effective October 19, 2007.
DCGS00161 Confidential Assistant to the Director, Office of Legislative Affairs. Effective October 26, 2007.
DCGS00448 Confidential Assistant to the Assistant Secretary for Market Access and Compliance. Effective October 26, 2007.

Section 213.3315 Department of Labor

DLGS60093 Staff Assistant to the Director of Scheduling. Effective October 03, 2007.
DLGS60113 Special Assistant to the Deputy Assistant Secretary, Office of Disability Employment Policy. Effective October 03, 2007.
DLGS60081 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 17, 2007.
DLGS60194 Special Assistant to the Associate Deputy Secretary. Effective October 17, 2007.

DLGS60199 Special Assistant to the Assistant Secretary for Public Affairs. Effective October 17, 2007.
DLGS60044 Special Assistant to the Director, Office of Faith Based and Community Initiatives. Effective October 24, 2007.
DLGS60118 Staff Assistant to the Executive Assistant to the Secretary. Effective October 24, 2007.
DLGS60074 Special Assistant to the Assistant Secretary for Public Affairs. Effective October 26, 2007.
DLGS60266 Chief of Staff to the Assistant Secretary for Mine Safety and Health. Effective October 26, 2007.

Section 213.3316 Department of Health and Human Services

DHGS60005 Special to the Assistant Secretary for Aging (Commissioner for Aging). Effective October 03, 2007.
DHGS60513 Confidential Assistant to the Deputy Director Office of Child Support Enforcement. Effective October 10, 2007.
DHGS60526 Confidential Assistant to the Deputy Secretary, Health and Human Services. Effective October 19, 2007.
DHGS60028 Special Assistant to the Chief of Staff. Effective October 24, 2007.

Section 213.3317 Department of Education

DBGS00657 Confidential Assistant to the Chief of Staff to the Deputy Secretary. Effective October 10, 2007.
DBGS00507 Confidential Assistant to the General Counsel. Effective October 11, 2007.
DBGS00652 Special Assistant to the Assistant Secretary for Management. Effective October 24, 2007.
DBGS00653 Confidential Assistant to the Director, Scheduling and Advance Staff. Effective October 24, 2007.
DBGS00655 Special Assistant to the Director, Office of Educational Technology. Effective October 24, 2007.

Section 213.3318 Environmental Protection Agency

EPGS07020 Confidential Assistant to the Deputy Chief of Staff (Operations). Effective October 03, 2007.
EPGS06008 Advance Specialist to the Deputy Chief of Staff (Operations). Effective October 09, 2007.
EPGS05018 Deputy Associate Administrator for Office of Congressional Affairs to the Associate Administrator for Congressional and Intergovernmental Relations. Effective October 10, 2007.
EPGS07022 Program Manager (Scheduling) to the Deputy Chief of Staff (Operations). Effective October 10, 2007.
EPGS07025 Advance Specialist to the Deputy Chief of Staff (Operations). Effective October 17, 2007.
EPGS07023 Advance Specialist to the Deputy Chief of Staff (Operations). Effective October 19, 2007.

Section 213.3327 Department of Veterans Affairs

DVGS60080 Special Assistant to the Secretary of Veterans Affairs. Effective October 11, 2007.

Section 213.3331 Department of Energy

DEGS00617 Special Assistant to the Director, Office of Scheduling and Advance. Effective October 10, 2007.

Section 213.3332 Small Business Administration

SBGS00634 Regional Administrator (Region I) to the Associate Administrator for Field Operations. Effective October 10, 2007.

Section 213.3337 General Services Administration

GSGS60103 Special Assistant to the Chief of Staff. Effective October 09, 2007.
GSGS00161 Public Affairs Specialist to the Deputy Associate Administrator for Communications. Effective October 24, 2007.

Section 213.3379 Commodity Futures Trading Commission

CTOT00056 Special Assistant to the Commissioner. Effective October 03, 2007.
CTOT00788 Attorney-Advisor (General) to a Commissioner. Effective October 04, 2007.

Section 213.3382 National Endowment for the Humanities

NHGS00081 Special Assistant to the Chairman. Effective October 19, 2007.

Section 213.3391 Office of Personnel Management

PMGS00071 Scheduler and Special Assistant to the Chief of Staff and Director of External Affairs. Effective October 10, 2007.

Section 213.3393 Pension Benefit Guaranty Corporation

BGGS01152 Chief of Staff to the Executive Director. Effective October 03, 2007.

Section 213.3394 Department of Transportation

DTGS60139 Special Assistant to the Deputy Secretary. Effective October 24, 2007.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E7–23758 Filed 12–6–07; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 10, 2007:

Open Meetings will be held on Tuesday, December 11, 2007, at 10 a.m., Thursday, December 13, 2007 at 9 a.m., and Monday, December 17, 2007 at 9 a.m., in Room L–002, the Auditorium, and a Closed Meeting will be held on Thursday, December 13, 2007 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Open Meeting scheduled for Tuesday, December 11, 2007 will be:

1. The Commission will consider whether to approve the 2008 budget of the Public Company Accounting Oversight Board and will consider the related annual accounting support fee for the Board under Section 109 of the Sarbanes-Oxley Act of 2002.

2. The Commission will consider whether to adopt amendments to the eligibility requirements of Form S–3 and Form F–3 of the Securities Act of 1933 to allow companies that do not meet the current public float requirements of the forms to nevertheless register primary offerings of their securities, subject to certain restrictions, including the amount of securities those companies may sell pursuant to the expanded eligibility standard in any one-year period.

3. The Commission will consider whether to adopt amendments to mandate electronic filing of Form D and revise the information

requirements of that form. Form D is a notice required to be filed by companies that have sold securities without registration under the Securities Act of 1933 based on a claim of exemption under Regulation D or Section 4(6) of the Act. Form D filings are also required by most states.

4. The Commission will consider whether to publish a concept release to solicit public comment concerning possible revisions to the oil and gas reserves disclosure requirements. These requirements exist in their current form in Item 102 of Regulation S–K and Rule 4–10 of Regulation S–X under the Securities Act of 1933 and the Securities Exchange Act of 1934.

The subject matter of the Open Meetings to be held on Thursday, December 13, 2007 at 9 a.m. and on Monday, December 17, 2007 at 9 a.m. will be:

The Commission will hold roundtable discussions on whether to provide U.S. issuers the choice of reporting their financial results under International Financial Reporting Standards. The roundtables will further explore the matters covered in the Commission's Concept Release on Allowing U.S. Issuers to Prepare Financial Statements in Accordance with International Financial Reporting Standards (Release 33–8831; 34–56217) and the responses received.

The subject matter of the Closed Meeting scheduled for Thursday, December 13, 2007 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Adjudicatory matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: December 4, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–23830 Filed 12–6–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Kimber-X Resources Corp.; Order of Suspension of Trading

December 5, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Kimber-X Resources Corp., a Delaware company with purported operations in Saskatchewan, Canada. Questions have arisen regarding the adequacy and accuracy of company press releases and other publicly-disseminated information concerning the company's current operations, issuance of securities, and transactions in company stock by company insiders.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Kimber-X Resources Corp.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Kimber-X Resources Corp. is suspended for the period from 9:30 a.m. EST, December 5, 2007, through 11:59 p.m. EST, on December 18, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 07–5992 Filed 12–5–07; 3:04 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56880; File No. SR–Amex–2006–96]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1, 2, 3, 4, 5, and 6 Thereto, Relating to the Listing and Trading of Trust Units of the Nuveen Commodities Income and Growth Fund

December 3, 2007.

I. Introduction

On October 12, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to list and trade trust units of the Nuveen Commodities Income and Growth Fund (''Fund'') (''Shares'') pursuant to proposed Amex Rules 1600 *et. seq.* On March 2, 2007, March 21, 2007, May 14, 2007, August 15, 2007, August 28, 2007, and September 17, 2007 the Amex submitted Amendment Nos. 1, 2, 3, 4, 5, and 6, respectively, to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on September 25, 2007.[3] The Commission received one comment letter regarding the proposal.[4] This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to add Amex rules 1600 *et seq.* that would permit the listing and trading of units of a trust or other similar entity (''Trust Units'') that invests in the assets of a trust, partnership, limited liability company, corporation or other similar entity constituted as a commodity pool that holds investments comprising or otherwise based on futures contracts, options on futures contracts, forward contracts, commodities and high credit quality short-term fixed income securities or other securities. Pursuant to these proposed rules, the Amex proposes to list and trade the Shares, which represent beneficial ownership interests in the assets of the Fund, which in turn, consist solely of units (''Master Fund Units'') of the Nuveen Commodities Income and Growth Master Fund LLC (the ''Master Fund''). The Exchange also proposes to amend section 141 of the Amex *Company Guide* (''Company Guide'') regarding listing fees to accommodate the listing of Trust Units.[5]

As described in the Exchange's proposal,[6] the Fund's primary investment objective is to seek total return through broad exposure to the commodities markets. The Fund's secondary objective is to provide investors with monthly income and capital distributions not commonly associated with commodity investments. The Master Fund will invest in commodity futures and forward contracts, options on commodity futures and forward contracts, and over-the-counter (''OTC'') commodity options in the following commodity groups: energy, industrial metals, precious metals, livestock, agriculturals, and tropical foods and fibers and may in the future include other commodity investments that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56465 (September 19, 2007), 72 FR 54489 (''Notice'').

[4] *See* letter to Nancy M. Morris, Secretary, Commission, from John G. Gaine, President, Managed Funds Association (''MFA''), dated October 15, 2007 (''MFA Letter'').

[5] The Amex original listing fee applicable to the listing of the Fund is $5,000. Under Section 141 of the Company Guide, the annual listing fee will be based upon the year-end aggregate number of units in all series of the Fund outstanding at the end of each calendar year.

[6] For a more detailed description of the Fund and Master Fund, including their structure, investment objectives, holdings, applicable exchange listing and trading rules, disclosure of pricing information, surveillance, and other regulation, *see* Notice at 54489–94.

become the subject of commodity futures trading.[7]

The Fund and the Master Fund are commodity pools. The Master Fund is managed by Nuveen Commodities Asset Management, LLC (the ''Manager''). The Manager is registered as a commodity pool operator (the ''CPO'') and a commodity trading advisor (the ''CTA'') with the Commodity Futures Trading Commission (''CFTC'') and is a member of the National Futures Association (''NFA'').

The Manager will serve as the CPO and CTA of the Fund and the Master Fund. The Manager will determine the Master Fund's overall investment strategy, including: (i) The selection and ongoing monitoring of the Master Fund's sub-advisors; (ii) the management of the Fund's and Master Fund's business affairs; and (iii) the provision of certain clerical, bookkeeping and other administrative services. Gresham Investment Management LLC (the ''Commodity Sub-Advisor'') will invest on a notional basis substantially all of the Master Fund's assets in commodity futures and forward contracts pursuant to a proprietary commodity investment strategy (the Tangible Asset Program® (''TAP®'')) [8] and a risk management program. The Commodity Sub-Advisor is a Delaware limited liability company and is registered with the CFTC as a CTA and a CPO and is a member of the NFA. The Commodity Sub-Advisor is also registered with the Commission as an investment adviser. Nuveen Asset Management (the ''Collateral Sub-Advisor''), an affiliate of the Manager, will invest the Master Fund's collateral in short-term, investment grade quality debt instruments. The Collateral Sub-Advisor is registered with the Commission as an investment adviser.

The Exchange submits that proposed Amex Rules 1600 *et seq.* will accommodate the listing and trading of Trust Units.[9]

III. Comment Letter and Response

The Commission received one comment letter, submitted by the MFA,[10] which expressed concerns about the daily disclosure of the Fund's holdings and net asset value (''NAV''). MFA believed that such daily disclosure is proper in the case of traditional exchange-traded funds (''ETFs'') because it facilitates the daily creation and redemption of units, which lowers the tracking error between an ETF's NAV and the trading price of such ETF.[11] In the case of the Fund, however, which does not provide for a continuous creation and redemption process, MFA argued that disclosure of the Fund's assets has no ''commercially reasonable purpose,'' and may frustrate continued innovation and ultimately harm investors. The MFA believed that daily disclosure could allow market participants to discover proprietary trading strategies through reverse engineering. MFA argued that this could result in front-running and also remove incentives for the formation of new closed-end funds and strategies.[12] Likewise, daily disclosure of the Fund's NAV, in the MFA's view, is not necessary and may have negative consequences. MFA believed that closed-end exchange-traded commodity pools such as the Fund should be subject to the same NAV and portfolio holding disclosure requirements applicable to closed-end exchange-traded registered investment companies.[13]

In its response,[14] the Exchange disagreed with the MFA regarding disclosure of the Fund's NAV. Amex argued that daily disclosure allows investors to determine whether actual discounts or premiums to NAV per share based on supply and demand and future expectation are consistent with market fundamentals.[15] With respect to the daily disclosure of the Fund's holdings, Amex largely agreed with MFA's comments, noting that it did not believe the daily portfolio holdings disclosure requirement to be particularly helpful or necessary, and agreeing that the Fund's structure does not provide for a mechanism to cause the market price per share to track NAV per share.[16]

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[18] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission further believes that the proposal is consistent with section 11A(a)(1)(C)(iii) of the Act,[19] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. As described in the Notice, the Exchange represents that futures, forwards and related exchange traded options, quotes and last sale information for the commodity contracts held by the Fund are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for such futures, forwards and exchange traded options is available by subscription from Reuters and Bloomberg. The relevant futures and forward exchanges also provide delayed futures and forward contract information on current and past trading

[7] For information regarding the futures contracts and other investments in which the Master Fund may invest, *see* Notice at 54490.

[8] TAP® is an actively managed, rules-based commodity investment strategy. TAP® is fundamental in nature and is designed to maintain consistent, fully collateralized exposure to commodities as an asset class. TAP® does not require the existence of price trends in order to be successful. TAP® currently requires investment in futures or forward contracts for three commodities in each of the energy, industrial metals, livestock, agriculturals, tropical foods and fibers and precious metal commodity groups. Commodity group weightings and individual commodity weightings are chosen by a process that blends two-thirds of five year global production value and one-third of five year value of commodity futures contracts traded in dollars. The process constrains the weightings of each commodity group such that no group may constitute more than 35% of TAP® and no single commodity interest can constitute more than 70% of its group. In addition, each commodity is rebalanced.

[9] Pursuant to Commentary .01 to proposed Amex Rule 1602, the Exchange shall file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Trust Units designated on different underlying investments, commodities, assets and/or portfolios.

[10] *See* MFA Letter, *supra* note 4.

[11] *See id.* at 1–2.

[12] *See id.* at 2–4.

[13] *See id.* at 4–5. MFA noted that many closed-end registered investment companies report their NAV weekly and the Investment Company Act of 1940 requires only quarterly portfolio holdings disclosure for closed-end registered investment companies.

[14] *See* letter to Nancy M. Morris, Secretary, Commission, from Jeffrey P. Burns, Vice President and Associate General Counsel, Exchange, dated November 7, 2007.

[15] *Id.* at 3.

[16] *Id.* at 1–2. Though the Exchange in its current letter believed that there was significant justification to eliminate the proposed requirement or daily portfolio holdings disclosure, the Exchange did not file an amendment to propose such a change with respect to the Fund.

[17] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78k–1(a)(1)(C)(iii).

sessions and market news free of charge on their respective Web sites. The contract specifications for the futures and forward contracts are also available from the futures and forward exchanges on their Web sites as well as other financial informational sources. Finally, the Web site for the Fund and the Manager, which will be publicly accessible at no charge, will contain the following information: (a) The prior business day's NAV and the reported closing price; (b) calculation of the premium or discount of such price against such NAV; and (c) other applicable quantitative information.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The Commission notes that the Exchange will, prior to listing, obtain a representation from the Fund that the NAV per share will be calculated daily and made available to all market participants at the same time.[20] In addition, the Exchange represents that disclosure of the portfolio composition of the Fund will be made to all market participants at the same time.[21] Moreover, the Exchange notes that each of the Manager, the Commodity Broker, and the Commodity Sub-Advisor has represented to the Exchange that it will establish firewall procedures with respect to personnel who have access to information concerning changes and adjustments to components of the Fund to prevent the use and dissemination of material non-public information.[22] Further, the trading of the Shares is subject to the specialist prohibitions in Proposed Amex Rule 1603.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. Proposed Amex Rule 1602(b)(ii) provides that the Exchange will halt trading in the Shares if the circuit breaker parameters of Amex Rule 117 have been reached. In exercising its discretion to halt or suspend trading in the Shares, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in addition to other factors that may be relevant. In particular, if the portfolio holdings and net asset value per share are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the portfolio holdings or net asset value per share occurs. If the interruption to the dissemination of the portfolio holdings or net asset value per share persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to Amex's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares. In addition, Amex has represented that it has information sharing agreements with the InterContinental Exchange, the Chicago Mercantile Exchange, and the New York Mercantile Exchange and may obtain market surveillance information from other exchanges, including the Chicago Board of Trade, London Metals Exchange, and the New York Board of Trade through the Intermarket Surveillance Group.

(2) Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular regarding the prospectus or delivery requirements that apply to the Shares. The Information Circular will also provide guidance with regard to member firm compliance responsibilities when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares, as well as applicable Exchange rules. In addition, the Information Circular will also reference the fact that there is no regulated source of last sale information regarding physical commodities and note the respective jurisdictions of the SEC and CFTC .

This approval order is based on the Exchange's representations.

Finally, the Commission believes that the daily disclosure requirements relating to the Fund's holdings and NAV are appropriate. Specifically, the Commission believes that daily disclosure of the Fund's NAV per share should aid investors in determining the degree to which the Shares are tracking the Fund's NAV per share. The Commission believes that the same is true for daily disclosure of the holdings of the Fund as such disclosure provides additional transparency. In addition, the Commission notes that the Exchange did not file an amendment seeking to change this disclosure requirement. Accordingly, the Commission does not believe that the commenter's assertions form a basis either to disapprove or to delay approval of the Exchange's proposed rule change and listing of the Fund.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (SR-Amex-2006–96), as modified, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23747 Filed 12–6–07; 8:45 am]

BILLING CODE 8011–01–P

[20] *See* proposed Amex Rule 1602(a)(ii).

[21] *See* Notice, *supra* note 3, at note 15.

[22] *See* Notice at 54492.

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56882; File No. SR–Amex–2007–56]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change Relating To Resolving Uncompared Transactions

December 3, 2007.

I. Introduction

On June 4, 2007, the American Stock Exchange LLC (''Amex'') filed and on September 18, 2007, amended, a proposed rule change with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder [2] to amend Rule 724 (''Agents to Resolve DKs'') and the corresponding Commentary. As proposed, the amendments would require each member to designate a representative that is away from the Amex's trading floor and that is authorized to resolve uncompared transactions (''DKs'') on the member's behalf. The proposed rule change was published for comment in the **Federal Register** on October 16, 2007.[3] No comment letters were received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 56635 (Oct. 10, 2007), 72 FR 58693.

proposal. This order approves the proposal.

II. Description of the Proposal

Amex is revising Rule 724 to require each member that executes transactions on Amex's trading floor (''Floor'') to designate another member firm, allied member, registered representative, or any other person required to be registered as a broker-dealer under the Act that is physically located away from the Floor to act in a DK resolution capacity by means of telephone, e-mail, or fax submission. Each member will retain the option to also designate a Floor member to act on its behalf regarding DK notices.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered securities exchange. In particular, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act,[4] which requires, among other things, that the rules of a national securities exchange be designed to foster cooperation and coordination among persons engaged in facilitating transactions in securities. The new requirements that each Amex member must designate an off-Floor representative that is equipped with electronic communication capabilities to act on its behalf to resolve DK notices in its absence will clarify the protocol for and reduce the delays associated with resolving such uncompared transactions, thereby facilitating a more prompt and reliable processing of securities transactions among Amex members.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 6 of the Act[5] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–Amex–2007–56) be, and hereby is, approved.[7]

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(2).

[7] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

For the Commission by the Division of Trading and Markets pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23788 Filed 12–6–07; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISISON

[Release No. 34–56873; File No. SR–CBOT–2007–01]

Self-Regulatory Organization; Board of Trade of the City of Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to the Renumbering and Reorganization of Rules Relating to Listing Standards for Security Futures Products

November 30, 2007.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on November 1, 2007, the Board of Trade of the City of Chicago, Inc. (''CBOT®'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rules described in Items I, II, and III below, which Items have been substantially prepared by the CBOT. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons. The CBOT also has filed the proposed rules with the Commodity Futures Trading Commission (''CFTC''), together with a written certification under section 5c(c) of the Commodity Exchange Act (''CEA'')[3] on October 25, 2007.

I. Self-Regulatory Organization's Description of the Proposed Rules

The proposed rule changes delete CBOT Rulebook Chapter 57 (Single Stock Futures) and Chapter 58 (Narrow-Based Stock Index Futures) in their entirety and substitute new CBOT Rulebook Chapter 34 (Single Stock Futures) and Chapter 35 (Narrow-Based Stock Index Futures). In addition, the proposed rule changes renumber current CBOT Regulations 431.07 (Customer Margins for Security Futures Positions Held in Futures Accounts) and 431.08 (Acceptable Margin for Security Futures and Treatment of Undermargined Accounts) as Rules 931 and 932.

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

The text of the proposed rule change is available on the Exchange's Web site (*http://www.cmegroup.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

The CBOT has prepared statements concerning the purpose of, and basis for, the proposed rules, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

1. Purpose

The CBOT has proposed to substitute new rulebook Chapters 34 and 35 for current Chapters 57 and 58, and to renumber current Regulations 431.07 and 431.08 as Rules 931 and 932 in connection with the adoption of a new rulebook for the CBOT as a result of the merger between the CBOT's former holding company, CBOT Holdings, Inc., and the former holding company of Chicago Mercantile Exchange Inc., CME Holdings Inc., to form the CME Group.[4] The CBOT is adopting a new rulebook, in order to harmonize its rules with those of Chicago Mercantile Exchange Inc. (''CME''), which utilizes the formatting and numbering system of the CME rulebook. New CBOT rulebook Chapters 34 and 35 mirror current CBOT Chapters 57 and 58 in content, although the organization and numbering of the rules has changed. Several minor non-substantive changes have also been made, as follows: (1) All references to the ''Clearing Services Provider'' have been changed to the ''Clearing House'' to reflect the new relationship of the CME Clearing House to the CBOT post-merger; (2) all references to CBOT ''regulations'' have been changed to ''rules'' because the CBOT will no longer make any distinctions between Exchange ''rules'' and ''regulations''; and (3) current Regulation 5702.01 and its parallel Regulation 5802.01 (Emergencies, Acts of God, Acts of Government) have been deleted as unnecessary since the CBOT is adopting a similar Rule in its new Chapter 7 (Delivery Facilities and

[4] The CBOT certified its new rulebook to the CFTC on October 25, 2007, notifying the CFTC that most of its new rules would be implemented on November 29, 2007, including the proposed rule changes that are addressed in this filing.

Delivery Procedures) that applies generally to all CBOT products.[5] New Rules 931 and 932 are identical to current Regulations 431.07 and 431.08.

2. Statutory Basis

The Exchange has filed these proposed regulations pursuant to section 19(b)(7) of the Act.[6] The CBOT believes that these rules, as renumbered and reorganized, continue to be authorized by, and consistent with, section 6(b)(5) of the Act,[7] because they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOT does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Since the proposed rule changes will permit the CBOT to provide a trading venue for security futures, these rules will serve to enhance and promote competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rules Received From Members, Participants, or Others

The CBOT neither solicited nor received any written comments on the proposed regulations.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Pursuant to section 19(b)(7)(B) of the Act,[8] the proposed regulations became effective on October 26, 2007.[9] Within 60 days of the date of effectiveness of the proposed regulations, the Commission, after consultation with the CFTC, may summarily abrogate the proposed regulations and require that the proposed regulations be re-filed in accordance with the provisions of section 19(b)(1) of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOT–2007–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOT–2007–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the CBOT. All comments received will be posted without change; the Commission does not edit identifying personal information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOT–2007–01 and should be submitted on or before December 28, 2007.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23721 Filed 12–6–07; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* CBOT Rule 701, as certified to the CFTC on October 25, 2007.

[6] 15 U.S.C. 78s(b)(7).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(7)(B).

[9] The CBOT filed the proposed regulations with the CFTC, together with a written certification under Section 5c(c) of the CEA, 7 U.S.C. 7a–2(c), on October 25, 2007.

[10] 15 U.S.C. 78s(b)(1).

[11] 17 CFR 200.30–3(a)(73).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56867; File No. SR–NASDAQ–2007–065]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Conform SRO Rules to Changes to Rule 10a–1 and Regulation SHO

November 29, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 11, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes a rule change to eliminate Nasdaq Rule 3350 and IM–3350 and to make conforming changes to other Nasdaq rules, as required by recent Commission rulemaking.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

3350. *Reserved.* [Short Sale Rule]

[(a) With respect to trades executed on Nasdaq, no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq Global Market security at or below the current best (inside) bid displayed in the National Market System when the current best (inside) bid is below the preceding best (inside) bid in the security. For purposes of this rule, the term ''customer'' includes a non-member broker-dealer.

(b) In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right, or ex-any other distribution, all quotation prices prior to the ''ex'' date may be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

reduced by the value of such distribution.

(c) The provisions of paragraph (a) shall not apply to:

(1) Sales by a registered market maker registered in the security on Nasdaq in connection with bona fide market making activity. For purposes of this paragraph, transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered bona fide market-making activity.

(2) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as possible without undue inconvenience or expense.

(3) Sales by a member, for an account in which the member has no interest, pursuant to an order to sell which is marked "long".

(4) Sales by a member to offset odd-lot orders of customers.

(5) Sales by a member to liquidate a long position which is less than a round lot, provided that such sale does not change the position of the member by more than one unit of trading.

(6) Sales by a person of a security for a special arbitrage account if the person then owns another security by virtue of which the person is, or presently will be, entitled to acquire an equivalent number of securities of the same class of securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

(7) Sales by a person of a security effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on such a securities market subject to the jurisdiction of the United States; provided the person at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling the person to cover such sale is then available to the person in such foreign securities market and intends to accept such offer immediately.

(8) Sales by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any layoff sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.

(9) Sales of securities as to which all short sale price tests have been suspended by operation of a Pilot Order issued by the Commission pursuant to SEC Rule 202T.

(10) Sales of securities included in the Nasdaq 100 Index.

(11) Short sales of securities in the Nasdaq Crossing Network pursuant to NASDAQ Rule 4770 provided that:

(a) Such short sales involve securities that comprise the S&P 500 Index;

(b) Such short sales involve securities that qualify as "actively-traded securities" under Regulation M; or

(c) Such short sales are part of a basket transaction of 20 or more securities in which the subject security does not comprise more than five percent of the value of the basket traded.

(d) No member shall effect a short sale for the account of a customer or for its own account indirectly or through the offices of a third party to avoid the application of this Rule.

(e) No member shall knowingly, or with reason to know, effect sales for the account of a customer or for its own account to avoid the application of this Rule.

(f) A member that is not currently registered as a Nasdaq market maker in a security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this Rule notwithstanding that such member may not have a net long position in such security if and to the extent that the member's short position in the security is the subject of offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(g) For purposes of this Rule, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt.

(h)(1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of an options market maker that would otherwise be in contravention of this Rule, if:

(A) The options market maker is registered with a qualified options exchange as a qualified options market maker in a stock options class on a Nasdaq Global Market security or an options class on a qualified stock index; and

(B) The short sale is an exempt hedge transaction.

(2) For purposes of this paragraph:

(A)(i) An "exempt hedge transaction," in the context of qualified options market makers in stock options classes, shall mean a short sale in a Nasdaq Global Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in a transaction(s) contemporaneous with the short sale,[1] provided that when establishing the short position the options market maker is eligible to receive(s) good faith margin pursuant to section 220.12 of Regulation T under the Act for that transaction.

(ii) An "exempt hedge transaction," in the context of qualified options market makers in stock index options classes, shall mean a short sale in a Nasdaq Global Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting stock index options position or an offsetting stock index options position that was created in a transaction(s) contemporaneous with the short sale, provided that:

a. The security sold short is a component security of the index underlying such offsetting index options position;

b. The index underlying such offsetting index options position is a "qualified stock index;" and

c. The dollar value of all exempt short sales effected to hedge the offsetting stock index options position does not exceed the aggregate current index value of the offsetting options position.

(iii) Notwithstanding any other provision of this paragraph (h), any transaction unrelated to normal options market making activity, such as index arbitrage or risk arbitrage that in either case is independent of an options market maker's market making functions, will not be considered an "exempt hedge transaction."

(B) A "qualified options market maker" shall mean an options market maker who has received an appointment as a "qualified options market maker" for certain classes of stock options on Nasdaq Global Market securities and/or index options on qualified stock indexes pursuant to the rules of a qualified options exchange.

(C) A "qualified options exchange" shall mean a national securities exchange that has approved rules and procedures providing for:

(i) Designating market makers as qualified options market makers, which standards shall be designed to identify options market makers who regularly engage in market making activities in the particular options class(es);

(ii) The surveillance of its market maker's utilization of the exemption set forth in paragraph (h)(1) to assure that short sales effected by qualified options market makers are exempt hedge transactions and that other non-qualified market makers are not utilizing the exemption; and

(iii) Authorization of Nasdaq to withdraw, suspend or modify the designation of a qualified options market maker but only if a qualified options exchange has determined that the qualified options market maker has failed to comply with the terms of the exemption, and that such a withdrawal, suspension or modification of the market maker's exemption is warranted in light of the substantial, willful, or continuing nature of the violation.

(D) A ''qualified stock index'' shall mean any stock index that includes one or more Nasdaq Global Market securities, provided that more than 10% of the weight of the index is accounted for by Nasdaq Global Market securities and provided further that the qualification of an index as a qualified stock index shall be reviewed as of the end of each calendar quarter, and the index shall cease to qualify if the value of the index represented by one or more Nasdaq Global Market securities is less than 8% at the end of any subsequent calendar quarter.

(E) ''Aggregate current index value'' shall mean the current index value times the index multiplier.

(F) A member will not be in violation of paragraph (a) above if the member executes a short sale for the account of an options market maker that is in contravention of this paragraph (h), provided that the member did not know or have reason to know that the options market maker's short sale was in contravention of this paragraph (h).

(i)(1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of a warrant market maker that would otherwise be in contravention of this Rule, if:

(A) The warrant market maker is a registered Nasdaq market maker for the warrant; and

(B) The short sale is an exempt hedge transaction that results in a fully hedged position.

(2) For purposes of this paragraph, an ''exempt hedge transaction'' shall mean a short sale in a Nasdaq Global Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting warrant position or an offsetting warrant position that was created in a transaction(s) contemporaneous with the short sale.[2] Notwithstanding any other provision of this paragraph, any transaction unrelated to normal warrant market making activity, such as index arbitrage or risk arbitrage that in either case is independent of a warrant market maker's market making functions, will not be considered an ''exempt hedge transaction.''

(3) Nasdaq may withdraw, suspend or modify the exemption for a warrant market maker upon determination that the market maker has failed to comply with the terms of the exemption, and that such a withdrawal, suspension or modification of the market maker's exemption is warranted in light of the substantial, willful, or continuing nature of the violation.

(4) A member will not be in violation of paragraph (a) above if the member executes a short sale for the account of a warrant market maker that is in contravention of this paragraph (i), provided that the member did not know or have reason to know that the warrant market maker's short sale was in contravention of paragraph (i).

(j) Pursuant to the Rule 9600 Series or on Nasdaq's own motion, Nasdaq may exempt either unconditionally, or on specified terms and conditions, any transaction or class of transactions from the provisions of this Rule.

(k) Definitions:

(1) The term ''short sale'' shall have the same meaning as contained in SEC Rule 200, adopted pursuant to the Act.

(2) The term ''block positioner'' shall have the same meaning as contained in SEC Rule 3b–8(c) for ''Qualified Block Positioner'' adopted pursuant to the Act.

(l) This section shall be in effect until December 15, 2006.]

[[1] The phrase contemporaneously established includes transactions occurring simultaneously as well as transactions occurring within the same brief period of time.]

[[2] The phrase contemporaneously established includes transactions occurring simultaneously as well as transactions occurring within the same brief period of time.]

[IM–3350. Short Sale Rule]

[(a)(1) In developing a Short Sale Rule for Nasdaq Global Market securities, Nasdaq has adopted an exemption to the Rule for certain market making activity. This exemption is an essential component of the Rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq Global Market securities. Rule 3350(c)(1) states that short selling prohibitions shall not apply to sales by registered Nasdaq market makers in connection with bona fide market making activity and specifies that transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered as bona fide market making. Thus two standards are to be applied: One must be a registered Nasdaq market maker and one must engage in ''bona fide'' market making activity to take advantage of this exemption. With this interpretation, Nasdaq wishes to clarify for members some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the Rule's application.

(2) First, as the Rule indicates, bona fide market making activity does not include activity that is unrelated to market making functions, such as index arbitrage and risk arbitrage that is independent from a member's market making functions. While these types of arbitrage activity appear to be suitable for the firm's overall hedging or risk management concerns, they do not warrant an exemption from the Rule. However, short sales of a security of a company involved in a merger or acquisition will be deemed bona fide market-making activity if made to hedge the purchase or prospective purchase (based on communicated indications of interest) of another security of a company involved in the merger or acquisition, which purchase was made, or is to be made, in the course of bona fide market making activity. The purchase of a security of a company involved in a merger or acquisition made to hedge a short sale of another security involved in the merger or acquisition, which sale was made in the course of bona fide market making activity, will not cause the sale to be deemed unrelated to normal market-making activity. Short sales made to hedge any such purchases or prospective purchases must be reasonably consistent with the exchange ratio (or exchange ratio formula) specified by the terms of the merger or acquisition.

(3) Similarly, bona fide market making would exclude activity that is related to speculative selling strategies of the member or investment decisions of the firm and is disproportionate to the usual market making patterns or practices of the member in that security. Nasdaq does not anticipate that a firm could properly take advantage of its market maker exemption to effectuate such speculative or investment short selling decisions. Disproportionate short selling in a market making account to effectuate such strategies will be viewed by Nasdaq as inappropriate activity that

does not represent bona fide market making and would therefore be in violation of Rule 3350.

(b) With respect to trades executed on or reported to Nasdaq, Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq Global Market security at or below the current best (inside) bid displayed in the Nasdaq Market Center when the current best (inside) bid is below the proceeding best (inside) bid in the security. For purposes of this rule, the term ''customer'' includes a non-member broker-dealer. Nasdaq has determined that in order to effect a ''legal'' short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least $0.01 above the current inside bid when the current inside spread is $0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least $0.01.

(c)(1) Rule 3350 prohibits a member from effecting a short sale for the account of a customer or for its own account directly or through the offices of a third party for the purpose of avoiding the application of the Short Sale Rule. Further, the Rule prohibits a member from knowingly, or with reason to know, effecting sales for the account of a customer or for its own account for the purpose of avoiding the Rule. With this interpretation, Nasdaq wishes to clarify some of the circumstances under which a member would be deemed to be in violation of Rule 3350.

(2) For example, in instances where the current best bid is below the preceding best bid, if a market maker alone at the inside best bid were to lower its bid and then raise it to create an ''up bid'' for the purpose of facilitating a short sale, Nasdaq would consider such activity to be a manipulative act and a violation of Nasdaq's Short Sale Rule. Nasdaq also would consider it a manipulative act and a violation of the Rule if a market maker with a long stock position were to raise its bid above the inside bid and then lower it to create a ''down bid'' for the purpose of precluding market participants from selling short. In addition, if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid in Nasdaq in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of Rule 3350. Similarly, a market maker would be deemed in violation of the Rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with the Rule, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.

(3) Nasdaq believes that members' activities to circumvent the Rule through indirect actions such as executions with other members or through facilitation of customer orders while being protected from loss are antithetical to the purposes of the Rule. Accordingly, Nasdaq will consider any such activity as a violation of Rule 3350.

(d) Nasdaq calculates changes to the inside bid displayed in the Nasdaq Market Center and disseminates a ''bid arrow'' via Nasdaq data feeds for market participants to use to comply with Rule 3350 when utilizing the execution functionality of the Nasdaq Market Center. The initial bid arrow each day shall be calculated at market open as follows.

(1) For stocks subject to Rule 4709(c), the initial bid arrow after completing the process described in Rule 4709(c)(1) through (3) shall be up and the next and subsequent bid arrows shall be calculated by comparing the bid arrow with each quotation update processed by the Nasdaq system after the system begins processing pursuant to Rule 4709(c)(4).

(2) For stocks described in Rule 4704(d), the initial bid arrow at the conclusion of the Nasdaq Opening Cross shall be up and the next and subsequent bid arrows shall be calculated by comparing the bid arrow with each quotation update processed by the Nasdaq system after the Nasdaq Opening Cross concludes.]

3360. Short-Interest Reporting

(a) To the extent such information is not otherwise reported to the NASD in conformance with NASD Rule 3360, each member shall maintain a record of total ''short'' positions in all customer and proprietary firm accounts in securities listed on Nasdaq and shall regularly report such information to Nasdaq in such a manner as may be prescribed by Nasdaq. Reports shall be made as of the close of the settlement date designated by Nasdaq. Reports shall be received by Nasdaq no later than the second business day after the reporting settlement date designated by Nasdaq.

(b) For purposes of this Rule:

(1) ''short'' positions to be reported are those resulting from ''short sales'' as that term is defined in SEC Rule 200(a) of Regulation SHO, with the exception of positions that meet the *following* requirements: [of Subsections (e)(1), (6), (7), (8), and (10) of SEC Rule 10a–1 adopted under the Act; and]

(A) any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense;

(B) any sale of a security covered by a short sale rule on a national securities exchange (except a sale to a stabilizing bid complying with Rule 104 of Regulation M) effected with the approval of such exchange which is necessary to equalize the price of such security thereon with the current price of such security on another national securities exchange which is the principal exchange market for such security;

(C) any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer;

(D) any sale of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on a securities market subject to the jurisdiction of the United States; provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him in such foreign securities market and intends to accept such offer immediately; and

(E) any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through

rights or a standby underwriting commitment.

(2) No change.

* * * * *

IM–4390 Impact of Non-Designation of Dually Listed Securities

To foster competition among markets and further the development of the national market system following the repeal of NYSE Rule 500, Nasdaq shall permit issuers whose securities are listed on the New York Stock Exchange to apply also to list those securities on the Nasdaq Global Market (''NGM''). Nasdaq shall make an independent determination of whether such issuers satisfy all applicable listing requirements and shall require issuers to enter into a dual listing agreement with Nasdaq.

While Nasdaq shall certify such dually listed securities for listing on the NGM, Nasdaq shall not exercise its authority under Rule 4390 separately to designate or register such dually listed securities as Nasdaq national market system securities within the meaning of Section 11A of the Act or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service (''CQS'') and Consolidated Tape Association national market system plans (''CQ and CTA Plans''), shall remain subject to those plans and shall not become subject to the Nasdaq UTP Plan, the national market system plan governing securities designated by Nasdaq. For purposes of the national market system, such securities shall continue to trade under their current one, two, or three-character ticker symbol. Nasdaq shall continue to send all quotations and transaction reports in such securities to the processor for the CTA Plan. In addition, dually listed issues that are currently eligible for trading via the Intermarket Trading System (''ITS'') shall remain so and continue to trade on the Nasdaq Intermarket trading platform as they do today.

Through this interpretation, Nasdaq also resolves any potential conflicts that arise under Nasdaq rules as a result of a single security being both a security subject to the CQ and CTA Plans (a ''CQS security''), which is subject to one set of rules, and a listed NGM security, which is subject to a different set of rules. Specifically, dually listed securities shall be Nasdaq securities for purposes of rules related to listing and delisting, and shall remain as CQS securities under all other Nasdaq rules. Treating dually listed securities as CQS securities under Nasdaq rules is consistent with their continuing status as CQS securities under the CTA, CQ, and ITS national market system, as described above. This interpretation also preserves the status quo and avoids creating potential confusion for investors and market participants that currently trade these securities on Nasdaq.

For example, Nasdaq shall continue to honor the trade halt authority of the primary market under the CQ and CT Plans. Nasdaq Rule 4120(a)(2) and (3) governing CQS securities shall apply to dually listed securities, whereas Nasdaq Rule 4120(a)(1), (4), (5), (6), and (7) shall not. [SEC Rule 10a–1 governing short sales of CQS securities shall continue to apply to dually listed securities, rather than Nasdaq Rule 3350 governing short sales of Nasdaq-listed securities.] Market makers in dually listed securities shall retain all obligations imposed by the Nasdaq Rule 5200 Series regarding CQS securities rather than assuming the obligations appurtenant to Nasdaq-listed securities. The fees applicable to CQS securities set forth in Nasdaq Rule 7010 shall continue to apply to dually listed issues.

* * * * *

4755. Order Entry Parameters

(a) System Orders

(1) General—A System order is an order that is entered into the System for display and/or execution as appropriate. Such orders are executable against marketable contra-side orders in the System.

(A) All System Orders shall indicate limit price and whether they are a buy, short sale, [short-sale exempt,] or long sale. Systems Orders can be designated as Market Hours Immediate or Cancel (''MIOC''), Market Hours Good-till-Cancelled (''MGTC''), Market Hours Day (''MDAY''), System Hours Expire Time (''SHEX''), System Hours Day (''SDAY''), System Hours Immediate or Cancel (''SIOC''), System Hours Good-till-Cancelled (''SGTC''), or Good-til-Market Close ''GTMC'').

(B)–(C) No change.

(2) *Reserved* [Short Sale Compliance—System orders to sell short shall not be executed if the execution of such an order would violate any applicable short sale regulation of the SEC or Nasdaq. For Nasdaq securities, the System shall validate for short sale compliance using a bid tick based upon changes to the national best bid and offer disseminated pursuant to an effective transaction reporting plan. For NYSE and Amex securities, the System shall validate for short sale compliance based upon changes to the consolidated last sale disseminated pursuant to an effective transaction reporting plan.]

(3)–(4) No change.

* * * * *

4758. Order Routing

(a) Order Routing Process

(1) No change. The Order Routing Process shall be available to Participants from 7 a.m. until 8 p.m. Eastern Time, and shall route orders as described below: Beginning March 5, 2007, in connection with the trading of securities governed by Regulation NMS, all routing of orders shall comply with Rule 611 of Regulation NMS under the Exchange Act.

(A)–(B) No change.

(C) Priority of Routed Orders. Regardless of the routing option selected, orders sent by the System to other markets do not retain time priority with respect to other orders in the System and the System shall continue to execute other orders while routed orders are away at another market center. Once routed by the System, an order becomes subject to the rules and procedures of the destination market including, but not limited to, [short-sale regulation and] order cancellation. If a routed order is subsequently returned, in whole or in part, that order, or its remainder, shall receive a new time stamp reflecting the time of its return to the System.

4759. ITS Commitments

Until such time as Nasdaq withdraws from the ITS Plan, Quotes and Orders that are eligible for ITS will be processed by the System and routed to the appropriate Non-Nasdaq Participant Market as an ITS Commitment in accordance with the requirements of the ITS Plan and all applicable Nasdaq rules. Nasdaq shall participate in the ITS Plan as set forth below.

(a) No change.

(b) Inbound ITS Commitments

(1) No change.

(2) [If the ITS Commitment, if executed, would result in a violation of SEC Rule 10a–1, the Nasdaq Market Center will decline it.] *Reserved*

(3) No change.

(c) Outbound Commitments: Any ''commitment to trade,'' which is transmitted by Nasdaq to another Non-Nasdaq ITS Participant Market through ITS, shall be firm and irrevocable for the period of thirty seconds following transmission by the sender. All such commitments to trade shall, at a minimum:

(1)–(5) No change.

[(6) designate the commitment ''short'' or ''short exempt'' whenever it is a commitment to sell which, if it should result in an execution in the receiving market, would result in a short sale to which the provisions of SEC Rule 10a–1(a) under the Act would apply.]

(d)–(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 13, 2007, the SEC voted to adopt certain amendments to SEC Rule 10a–1 and Regulation SHO under the Act. The amendments, among other things: (1) Eliminate the short sale price test contained in SEC Rule 10a–1; (2) add Rule 201(a) of Regulation SHO to provide that no price test, including any price test of any self-regulatory organization (''SRO''), shall apply to short sales in any security; (3) add Rule 201(b) of Regulation SHO to prohibit any SRO from having a price test; and (4) amend Rule 200(g) of Regulation SHO to remove the requirement that a broker-dealer mark a sell order of an equity security as ''short exempt'' if the seller is relying on an exception from the price test of Rule 10a–1, or any price test of any exchange or national securities association. The amendments to SEC Rule 10a–1 and Regulation SHO became effective on July 3, 2007, and had a July 6, 2007 compliance date.

The purpose of this proposed rule change is to make conforming changes to Nasdaq rules to reflect the elimination of SEC Rule 10a–1 and other amendments to Regulation SHO by: (1) Eliminating references to SEC Rule 10a–1 in Nasdaq rules; and (2) repealing Nasdaq's short sale rule contained in Rule 3350 and IM–3350, as well as amending Nasdaq rules that reference Rule 3350 or IM–3350.

Eliminating References to SEC Rule 10a–1 in Nasdaq Rules. Currently, Rule 3360 (Short-Interest Reporting) requires members to record and report short interest information to Nasdaq. Reportable short positions are those resulting from ''short sales'' as the term is defined in SEC Rule 200 of Regulation SHO, with the exception of positions that meet the requirements of subsections (e)(1), (6), (7), (8), and (10) of Rule 10a–1 of the Act.[4] As a result of the repeal of SEC Rule 10a–1, these subsections will no longer exist. Therefore, Nasdaq is proposing a technical change to Rule 3360 to replace the references to these exceptions to SEC Rule 10a–1 with the underlying rule text of each provision. Nasdaq also is proposing to make conforming amendments to IM–4390 and Rules 4744, 4758, and 4759 to remove references to SEC Rule 10a–1.

Repeal of Nasdaq's Short Sale Rule. As noted above, the SEC has removed the restrictions on the execution prices of short sales and prohibited SROs from having price tests. Rule 3350 and IM–3350 generally prohibit a member from effecting short sales in Nasdaq Global Market securities otherwise than on an exchange for a customer account, or the member's own account, at or below the current national best (inside) bid, when the current national best (inside) bid is below the preceding national best (inside) bid. As an SRO, Nasdaq now is prohibited from having such a short sale price test under newly adopted SEC Rule 201 of Regulation SHO. Accordingly, Nasdaq proposes to repeal its short sale rule contained in Rule 3350 and the related interpretive material in IM–3350 and is proposing conforming changes to IM–4390 and Rules 4755, 4758, and 4759 to delete references to Rule 3350 in such rules.

Technical Changes. Nasdaq also proposes to make a technical change to the text of Rule 3360. Specifically, Rule 3360(b) provides that, subject to certain limited exceptions, short positions required to be reported under the rule are those resulting from short sales as the term is defined in Rule 200 of Regulation SHO. The term ''short sale'' is actually defined in Rule 200(a) of Regulation SHO. Therefore, Nasdaq is proposing to amend the text of Rule 3360 to reference Regulation SHO Rule 200(a), instead of Rule 200, to eliminate any confusion.

Implementation. As noted above, Nasdaq has filed the proposed rule change for immediate effectiveness. Nasdaq proposes to make the proposed rule change operative on July 6, 2007, to coincide with the operative date of the amendments to SEC Rule 10a–1 and Regulation SHO.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6(b)(5) of the Act,[5] which requires, among other things, that Nasdaq rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change is necessary and appropriate to comply with the amendments to SEC Rule 10a–1 and Regulation SHO.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Nasdaq has requested that the Commission waive the 5-day pre-filing notice and 30-day pre-operative period requirements for ''non-controversial'' proposals, based upon a representation that such waivers will allow Nasdaq to implement the rule changes to conform to currently effective changes in Regulation SHO and Rule 10a–1. In light of the foregoing, the Commission believes that waiver of the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission has determined to waive the notice requirement and the operative delay,[8] and the proposed rule change has become effective pursuant to section

[4] See Nasdaq Rule 3360(b)(1).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] For purposes only of waiving the 30 day pre-operative period, the Commission has considered the impact of the proposed rule change on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

19(b)(3)(A) of the Act,[9] and Rule 19b–4(f)(6) thereunder,[10] with no operative delay.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2007–065 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–065. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2006–065 and should be submitted on or before December 28, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23769 Filed 12–6–07; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56883; File No. SR–NSX–2007–11]

Self-Regulatory Organizations; The National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto, To Modify Rebate Programs for Automatic Execution Transactions in Certain Designated ETFs

December 3, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2007, the National Stock Exchange, Inc. (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On October 31, 2007 NSX filed Amendment No. 1 to the proposed rule change. On November 13, 2007 NSX filed Amendment No. 2 to the proposed rule change. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSX is proposing a change to its Rules and Fee Schedule to modify its market data rebate program and its liquidity provider rebate program for transactions that are executed through NSX BLADE℠, the Exchange's trading platform, effective October 1, 2007. The Exchange wishes to modify these rebate programs for only those transactions in certain Designated ETF Shares in which the User effecting such order has chosen the automatic execution mode of order interaction as set forth in Exchange Rule 11.13(b)(1). The text of the proposed rule change is available at the Exchange's Web site, *http://www.nsx.com*, the Exchange and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Exchange Rule 16.1(a), the Exchange maintains a Fee Schedule that contains its current fees, dues and other charges applicable to transactions in NSX BLADE (the ''NSX BLADE Fee Schedule''). Currently, the NSX BLADE Fee Schedule provides for a rebate of $0.0030 per share for adding liquidity into NSX BLADE through transactions in which ETP Holders have selected the Automatic Execution mode of order interaction (''AutoEx''), regardless of which symbol such transaction involves. Similarly, orders that are AutoEx at less than $1.00 per share will result in a rebate for a dollar amount equal to 0.3% of the price per share, multiplied by the number of shares executed. The Exchange also currently provides a 100% pro rata transaction credit of gross Tape ''A'', ''B'' and ''C'' market data revenue associated with trading regardless of the symbol that is the subject of such trades.[5]

The Exchange is proposing that the NSX BLADE Fee Schedule be modified to include the concept of Designated ETF Shares, which are certain Exchange Traded Funds and Exchange Traded Notes (hereinafter ''ETF Shares'') that the Exchange has determined should be subject to different liquidity providing and market data rebates than other symbols. These Designated ETF Shares are generally all Exchange Traded Funds and Exchange Traded Notes that are eligible to trade on the Exchange except for the Nasdaq-100 Index, more commonly referred to as the QQQQs. The Designated ETF Shares are listed by the Exchange on Exhibit A to the NSX BLADE Fee Schedule.

ETP Holders providing liquidity using AutoEx in Designated ETF Shares will receive a rebate of $0.0035 per share executed. Similarly, ETP Holders providing liquidity on orders executed at less than $1.00 per share using AutoEx in Designated ETF Shares will result in a rebate for a dollar amount equal to 0.35% of the price per share, multiplied by the number of shares executed. However, trades using AutoEx in Designated ETF Shares would no longer be eligible for market data revenue transaction credits as reflected in the amendments to Exchange Rule 16.2(b). The change in the liquidity provider and market data rebates is being proposed in order to increase trading volume in these Designated ETF Shares. There is no need to provide a similar incentive to increase trading volume in the securities that are not contained in the Exhibit A. These changes would be effective October 1, 2007.

The same trades in non-Designated ETF Shares using AutoEx, as well as all trades using the Order Delivery mode of order interaction as set forth in Exchange Rule 11.13(b)(2) (''Order Delivery''), would continue to receive the current rebate. Thus, for orders executed at $1.00 or more per share for non-Designated ETF shares, the liquidity provider rebate remains $0.0030 per share executed and, for all orders executed at a $1.00 or more per share using Order Delivery, the liquidity provider rebate remains $0.0028 per share executed.[6] These trades will continue to receive market data revenue transaction credits.

The Exchange is also proposing to delete the provision relating to ITS Transactions in the Fee Schedule as the Intermarket Trading System Plan has expired and therefore, the provision is no longer applicable.

Pursuant to Exchange Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange'' through the issuance of a Regulatory Circular of the changes to the NSX BLADE Fee Schedule and will provide a copy of the rule filing on the Exchange's Web site (*www.nsx.com*).

The Exchange liquidity provider rebates and market data rebates have been designed in this manner in order to ensure that the Exchange can continue to fulfill its obligations under the Act. Moreover, the proposed liquidity provider and market data rebates are not discriminatory in that all ETP Holders are eligible to trade in Designated ETF Shares listed on Exhibit A using AutoEx and may do so at their discretion.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges. NSX believes that the change is consistent with an equitable allocation of fees, because decreased market data revenue sharing for liquidity providers is offset by enhanced liquidity provider credits for the same market participants, which allows a more direct and readily calculated incentive for liquidity provision. Moreover, the proposed liquidity provider and market data rebates are not discriminatory in that all ETP Holders are eligible to trade in Designated ETF Shares listed on Exhibit A using AutoEx and may do so at their discretion.

B. Self Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is filed pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and subparagraph (f)(2) of Rule 19b–4 thereunder [10] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by a self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2007–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2007–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use

[5] *See* Securities Exchange Act Release No. 56008 (July 3, 2007), 72 FR 37809 (July 11, 2007) (SR–NSX–2007–07).

[6] For orders executed at less than $1.00 per share, the rebate for non-Designated ETF shares using AutoEx remains 0.30% of the price per share, multiplied by the number of shares executed and the rebate for all trades using Order Delivery remains 0.28% of the price per share, multiplied by the number of shares executed.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on November 13, 2007, the date on which NSX filed Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2007–11 and should be submitted on or before December 28, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23753 Filed 12–6–07; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56879; File No. SR–NYSEArca–2007–110]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Certain Modifications to the Initial Listing and Trading Standards for Equity Index-Linked Securities

December 3, 2007.

I. Introduction

On October 18, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to modify certain initial listing and trading standards for Equity Index-Linked Securities.[3] The proposed rule change was published for comment in the **Federal Register** on November 1, 2007.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

NYSE Arca Equities Rule 5.2(j)(6)(B)(I) currently permits the Exchange to list and trade, pursuant to Rule 19b–4(e) under the Act,[5] Equity Index-Linked Securities if, among other requirements, all component securities included in the underlying index are either: (1) Securities (other than foreign country securities and American Depository Receipts (''ADRs'')) that are (a) issued by a reporting company under the Act that is listed on a national securities exchange and (b) an ''NMS stock,'' as defined in Rule 600 of Regulation NMS;[6] or (2) foreign country securities or ADRs, subject to certain limitations. The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I) to permit the listing and trading of Equity Index-Linked Securities where the underlying index consists, in whole or in part, of (1) securities of closed-end management investment companies (''Closed-End Fund Securities'') or (2) investment company units (''ETF Securities''), which, in each case, are registered under the Investment Company Act of 1940 (the ''1940 Act'') and listed on a national securities exchange.

In its proposal, the Exchange stated its belief that trading in exchange-listed Closed-End Fund Securities and ETF Securities is subject to the same level of regulation as trading in exchange-listed equity securities. In addition, the Exchange stated that Closed-End Fund Securities and ETF Securities trade on the same exchange platforms as equity securities registered under the Act and are subject to the same exchange trading rules as equity securities. As such, the Exchange believes that it is appropriate to permit their inclusion as components of indexes underlying Equity Index-Linked Securities.

The Exchange also proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(v) to incorporate a limited exception to the requirement that 90% of the index's numerical value and at least 80% of the total number of component securities underlying an Equity Reference Asset must meet the then current criteria for standardized options trading set forth in NYSE Arca Rule 5.3. The Exchange proposes that an underlying index would not be subject to such requirement if (1) no underlying component security represents more than 10% of the dollar weight of such index, and (2) such index has a minimum of 20 component securities.

All of the options exchanges apply the same criteria to securities underlying exchange-traded options.[7] These criteria relate primarily to the distribution and trading volume of the securities underlying an option,[8] and, as such, the Exchange believes that such criteria are duplicative of the minimum market capitalization and trading volume requirements for securities underlying Equity Index-Linked Securities set forth in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(i) and (ii), respectively. The Exchange notes that the current requirement of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(ii), in particular, that relates to minimum trading volume for each component security is more stringent than the trading volume requirement related to options trading.[9] Notwithstanding the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE Arca Equities Rule 5.2(j)(6) defines Equity Index-Linked Securities as securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities, also referred to as the ''Equity Reference Asset.'' *See* NYSE Arca Equities Rule 5.2(j)(6).

[4] *See* Securities Exchange Act Release No. 56696 (October 24, 2007), 72 FR 61927 (''Notice'').

[5] *See* 17 CFR 240.19b–4(e). Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for such product class.

[6] *See* 17 CFR 242.600(b)(47). NMS stock means any security or class of securities (other than options) for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan.

[7] *See, e.g.*, Rule 1009 of the Philadelphia Stock Exchange, Inc.; Rule 5.3 of the Chicago Board Options Exchange, Incorporated; Rule 5.3 of NYSE Arca; and Rule 502 of the International Securities Exchange, LLC.

[8] The rules generally require a minimum of 7,000,000 publicly-held shares, 2,000 holders, a trading volume of at least 2,400,000 shares in the preceding 12 months, and a market price per share of the underlying security of at least $3.00 per share for securities that are ''covered securities,'' as defined in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)), and a market price per share of the underlying security of at least $7.50 for securities that are not ''covered securities.'' *See, e.g.*, NYSE Arca Rule 5.3.

[9] NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(ii) requires that each component security must have trading volume in each of the last six months or not less than 1,000,000 shares per month, except that for each of

Continued

foregoing, while a significant number of listed equity securities meet the minimum market capitalization and trading volume requirements for components of equity indexes under NYSE Arca Equities Rule 5.2(j)(6), the Exchange represents that many do not meet the current criteria for standardized options trading. The Exchange believes that the explicit market capitalization and trading volume requirements of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(i) and (ii), respectively, are sufficient to ensure that any component security comprising an Equity Reference Asset underlying a series of Equity Index-Linked Securities will have an adequate liquid trading market. In addition, the Exchange believes that, by requiring that both proposed conditions to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(v) (*i.e.*, enhancing concentration limits for component securities and increasing the minimum number of component securities) be met in order to avail of the proposed exemption to such rule, the proposal would significantly reduce the possibility of manipulation of the index. Based on the foregoing, the Exchange believes that the protection of requiring such securities to be qualified for options trading is unnecessary.

III. Commission's Findings and Order Granting Approval of the Proposed Rule Change

After careful review and based on the Exchange's representations, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [11] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

With respect to the proposal to permit the inclusion of Closed-End Fund Securities and ETF Securities in an underlying index of a series of Equity Index-Linked Securities, the Commission notes that issuers of Closed-End Fund Securities and ETF Securities must register under the 1940 Act, and such securities must be listed on a national securities exchange. The Commission also notes that Closed-End Securities and ETF Securities trade on the same platforms as equity securities and are generally subject to the same exchange trading rules as equity securities. In addition, in order for such securities to be included in an underlying index of an issue of Equity Index-Linked Securities, it must be an NMS stock, as defined in Rule 600(b)(47) of Regulation NMS.[12] The Commission believes that this proposal should benefit investors by creating additional alternatives to investing in such regulated products and competition in the market for Equity Index-Linked Securities, while maintaining transparency of the underlying components comprising an index.

The Commission further believes that the proposal to provide for a limited exception to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(v) reasonably balances the removal of impediments to a free and open market with the protection of investors and the public interest, two principles set forth in Section 6(b)(5) of the Act. The Commission notes that the minimum trading volume standard relating to the eligibility of securities underlying options overlaps with, and is less stringent than, the equivalent trading volume standards provided in NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(2)(ii) and (iii). Because the overall purpose of the current criteria for standardized options trading is to ensure proper liquidity of the underlying security, the Commission believes that the minimum market value thresholds of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(i), the minimum trading volume requirements provided in NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(2)(ii) and (iii), together with the enhanced concentration limits and increased minimum number of component securities needed in order to avail of the proposed exemption to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(v), will help ensure adequate liquidity of each component comprising an underlying index of Equity Index-Linked Securities. As such, the Commission believes it is reasonable and consistent with the Act for the Exchange to modify the listing standards for Equity Index-Linked Securities in the manner described in the proposal.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSEArca–2007–110), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23750 Filed 12–6–07; 8:45 am]

BILLING CODE 8011–01–P

the lowest dollar weighted component securities in the index that, in the aggregate, account for no more than 10% of the dollar weight of the index, the trading volume shall be at least 500,000 shares per month in each of the last six months. In contrast, the options criteria for underlying securities generally require a minimum trading volume (in all markets in which the underlying security is traded) of 2,400,000 shares in the preceding twelve months, as stated above.

[10] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra* note 6.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56885; File No. SR–NYSEArca–2007–123]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Relating to the Extension of the Pilot Program for Initial and Continued Financial Listing Standards for Common Stock of Operating Companies Until May 31, 2008

December 3, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On November 30, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f)(6) thereunder,[5] which renders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange corrected a typographical error on the proposed Pilot Program (as defined below) extension date and explained the amendment to the Pilot Program.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), has amended the rules governing NYSE Arca, LLC (also referred to as the ''NYSE Arca Marketplace''), which is the equities trading facility of NYSE Arca Equities, on a pilot program basis (''Pilot Program'') to amend the initial and continued financial listing standards for common stock of operating companies. The Pilot Program expires on November 30, 2007. The Exchange proposes to extend the Pilot Program until May 31, 2008.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca has amended on a pilot program basis the rules governing the NYSE Arca Marketplace to amend the financial listing standards for common stock of operating companies.[6] On October 3, 2007, the Commission approved the Exchange's proposal to amend the Pilot Program to, among other things, make the initial listing standards more restrictive and to exclude from qualification some companies that qualified to list but whose size or financial performance is not consistent with the kind of issuer the Exchange intended to list.[7] Based on the results of the Pilot Program, the Exchange has determined that the Pilot Program has met its expectations. As a result, the Exchange intends to file a proposal to permanently adopt the Pilot Program.

The Pilot Program expires on November 30, 2007. The Exchange proposes to extend the Pilot Program until May 31, 2008. This extension will permit Exchange staff to prepare the rule filing proposing to permanently adopt the Pilot Program.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would allow the Pilot Program to continue without any interruption, until May 31, 2008.[13] The Commission further notes that no comments were received on the Pilot Program.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–123 on the subject line.

---

[6] The Commission initially approved the Pilot Program for six months, until May 29, 2007. *See* Securities Exchange Act Release No. 54796 (November 20, 2006), 71 FR 69166 (November 29, 2006) (SR–NYSEArca–2006–85). The Pilot Program was subsequently extended for an additional six months, until November 30, 2007. *See* Securities Exchange Act Release No. 55838 (May 31, 2007), 72 FR 31642 (June 7, 2007) (SR–NYSEArca–2007–51).

[7] *See* Securities Exchange Act Release No. 56606, 72 FR 57982 (October 11, 2007) (SR–NYSEArca–2007–69).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on November 30, 2007, the date on which the Exchange submitted Amendment No. 1.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–123. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–123 and should be submitted on or before December 28, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23755 Filed 12–6–07; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56875; File No. SR–OCC–2007–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Binary Options

November 30, 2007.

I. Introduction

On June 28, 2007, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2007–08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on September 26, 2007.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change permits OCC to clear and settle binary options, including fixed return options (''FROs'') to be listed and traded by Amex[3] and binary options on broad-based indexes proposed to be listed and traded by CBOE.[4] Binary options (sometimes referred to as ''digital'' options) are all-or-nothing options that pay a fixed amount if exercised in the money and otherwise pay nothing. Until recently, OCC did not clear any binary options other than credit default options (''CDOs'') traded on CBOE. The Commission recently granted approval of proposed rule changes filed by OCC and CBOE so that CBOE could trade and OCC could clear related products called credit default basket options (''CDBOs'').[5] General characteristics of binary options, excluding features unique to CDOs and/or CDBOs that were already described in OCC's prior rule filings, are described below followed by an explanation of the specific rule changes now being made by OCC.

Description of Binary Options. Binary options are cash-settled options that have only two possible payoff outcomes, either a fixed exercise settlement amount or nothing at all. They are subject to automatic exercise. The underlying interest of a binary option may be one or more securities, an index of securities, or some other measure; however, OCC presently intends to clear only binary options that are within the definition of a ''security'' as determined by the Commission. In its capacity as a ''derivatives clearing organization'' regulated by the Commodity Futures Trading Commission (''CFTC''), OCC may in the future propose to clear binary options that are commodity options subject to the jurisdiction of the CFTC.

A binary option, other than a CDO or CDBO, is in the money and will be automatically exercised if its underlying interest value as measured against its exercise price is determined to meet the criteria for automatic exercise as specified in the Exchange Rules of the listing Exchange.[6] For example, in the case of a ''finish high fixed return option,'' such option will be automatically exercised and settled for a fixed amount of cash if its underlying interest value is above its exercise price at expiration. In the case of a ''finish low fixed return option,'' such option will be automatically exercised and settled for a fixed amount of cash if its underlying interest value is below its exercise price at expiration. The rule changes in this current filing for binary options are intended to be sufficiently generic to be the basis for clearing binary options to be listed by Amex and proposed to be listed by CBOE as well as other binary options in the future.

By-Law and Rule Amendments Applicable to Binary Options. In order to provide a framework of rules that can accommodate the clearance and settlement of various kinds of binary option products, OCC is broadening the By-Law Article and Rule Chapter covering CDOs and CDBOs.

(1) *Terminology—Article I, Section 1 and Article XIV, Section 1*

''Binary option'' is defined in Article XIV, Section 1 of the By-Laws, and the definition is cross-referenced in Article I of the By-Laws.

The definitions of ''option contract'' and ''type of option'' in Article I of the By-Laws is amended to include a binary option.

OCC is redefining the term ''class'' in Article XIV, Section 1 so that it will apply to binary options generally. To be within the same class, binary options

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 56471 (September 19, 2007), 72 FR 54705.

[3] Securities Exchange Act Release No. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007) (File No. SR–Amex–2004–27).

[4] File No. SR–CBOE–2006–105.

[5] Securities Exchange Act Release Nos. 56275 (August 17, 2007), 72 FR 47097 (August 22, 2007) (File No. SR–CBOE–2007–026) and 56288 (August 20, 2007), 72 FR 49034 (August 27, 2007) (File No. SR–OCC–2007–06).

[6] CDOs and CDBOs, on the other hand, do not have exercise prices. A CDO or CDBO is deemed to be in the money and is automatically exercised if a ''credit event'' occurs at any time prior to the last day of trading.

other than CDOs or CDBOs must cover the same underlying interest and have otherwise identical terms except for exercise price (if any) and expiration date.

The definition of ''exercise price'' in Article I is replaced with respect to binary options with a revised definition in Article XIV, Section 1 that will recognize that binary options will be settled by a fixed cash payment. The exercise price of a binary option neither is an amount that is paid in exchange for an underlying interest nor is used to determine the exercise settlement amount as in the case of other cash-settled options. In the case of a binary option other than a CDO or CDBO, the exercise price of a binary option is simply a defined value or range of values for the underlying interest. If the underlying interest value falls within the defined range at expiration of such binary option, the option will be automatically exercised; otherwise, the option will expire unexercised. A CDO or CDBO is said to have no exercise price.

OCC is redefining the term ''underlying interest'' in Article XIV, Section 1 so that it will apply to binary options generally. In the case of a binary option other than a CDO or CDBO, the underlying interest is the underlying security, securities, index, basket, or measure whose value is compared to such option's exercise price to determine whether the option is in the money and will be automatically exercised. In conjunction with the revised definitions of ''exercise price'' and ''underlying interest,'' OCC is also adding a new defined term, ''underlying interest value,'' to Article XIV, Section 1. When used with respect to a binary option other than a CDO or CDBO, underlying interest value means the value or level of the unit of trading of the underlying interest at any point in time as reported by the reporting authority. A new definition for the term ''unit of trading'' states ''unit of trading'' when used with respect to a binary option means the quantity of the underlying interest on which the underlying interest value is based and is ordinarily a single share in the case of binary options on individual equity securities or one (1) in the case of binary index options. The terms ''unit of trading'' and ''underlying interest value'' will not be applicable to CDOs and CDBOs.

Other terms that were created or amended for CDOs and CDBOs are modified to apply to binary options generally.

(2) *Terms of Cleared Contracts—Article VI, Section 10(e)*

Paragraph (e) of Article VI, Section 10 are further amended to apply to binary options generally.

(3) *General Rights and Obligations—Article XIV, Section 2B*

Article XIV, Section 2B defines the general rights and obligations of holders and writers of binary options other than CDOs or CDBOs. As noted above, the holder of a binary option that is automatically exercised will have the right to receive the fixed exercise settlement amount from OCC, and the assigned writer will have the obligation to pay that amount to OCC.

(4) *Adjustments of Binary Options Other Than CDOs or CDBOs—Article XIV, Section 3A; Unavailability or Inaccuracy of Final Underlying Interest Value—Article XIV, Section 5; Determination of Final Underlying Interest Value—Article XIV, Section 6*

Article XIV, Section 3A describes the methods by which binary options other than CDOs or CDBOs generally will be adjusted if adjustments are deemed to be necessary. Special adjustment rules are needed because of the fixed, cash-settlement feature of binary options. For instance, under Article VI, Section 11A(d), which governs adjustment of other equity options, if there is a stock dividend, distribution, or split whereby a whole number of shares of the underlying security is issued for each outstanding share, the exercise price is proportionately reduced, and the number of option contracts is increased by the number of shares issued with respect to each share of the underlying security. This adjustment would be inappropriate for binary options where the underlying interest is an equity security. For example, an XYZ option with an exercise price of $50 would be adjusted to become two XYZ options, each with an exercise price of $25. While the fixed exercise settlement amount of such binary option would be intended to remain at $100, such an adjustment would increase the total payout upon exercise to $200. To avoid this result, Article XIV, Section 3A(a)(4) will provide that the number of option contracts will not proportionally increase and only the exercise price will be adjusted. The other provisions of Article XIV, Section 3A are similar to Article VI, Section 11A with appropriate modifications for binary options. In order to maintain consistency with adjustment policies for physically settled stock options where such consistency is appropriate, certain changes in the treatment of dividends that were approved in SR–OCC–2006–01 and were to become effective at a future date will become effective on the same date for binary options on single stocks.

Article XIV, Section 3A(b) will govern adjustments of binary options for which the underlying interest is an index of equity securities and will be similar to Article XVII, Section 3, which governs index options, with appropriate modifications to reflect unique features of binary options. For instance, because binary options do not have an index multiplier, the Securities Committee will generally adjust the exercise price of a binary option of which the underlying interest is an index of equity securities to get the appropriate result.

Article XIV, Section 5, will give OCC the authority to fix the underlying interest value for a binary option other than a CDO or CDBO and to rely on that value for determining whether such binary option will be exercised under circumstances similar to those in which OCC may currently fix the exercise settlement amount for index options.

Article XIV, Section 6 will provide, in essence, that the underlying interest value of a series of binary options at expiration, other than CDOs or CDBOs, will be determined by the Exchange or Exchanges on which such series is traded subject to any overriding provision of OCC's By-Laws and Rules. If a series of options is traded on more than one Exchange, OCC could use the underlying interest value received from the Exchange deemed by OCC to be the principal Exchange, or OCC could employ a procedure to derive a single value based on some or all of the values received.

(5) *Exercise and Settlement—Chapter XV of the Rules and Rule 801*

Binary options will not be subject to the exercise-by-exception procedures applicable to most other options under OCC's Rules but will instead be automatically exercised prior to or at expiration if the specified criterion for exercise is met. The procedures for the automatic exercise of binary options, as well as assignment and settlement of exercises (including provisions applicable to a suspended Clearing Member), will be set forth in Rules 1501 through 1505 of new Chapter XV and in revised Rule 801(b).

(6) *Margin Requirements—Rule 601; Deposits in Lieu of Margin—Rule 1506*

OCC will margin binary options through its usual ''STANS'' system. STANS has been modified to accommodate the particular binary options to be traded by Amex and the binary index product currently proposed by CBOE. CDOs and CDBOs will be margined as described in the applicable rule filings cited above.

OCC is not proposing to accept escrow deposits in lieu of clearing margin for binary options. Therefore, Rule 1506 will state that Rule 610, which otherwise would permit such deposits, does not apply to binary options.

(7) *Acceleration of Expiration Date—Rule 1507(d)*

This new provision will accelerate the expiration date of a binary option other than a CDO or CDBO when OCC determines in its discretion that the underlying interest value of such option has become fixed prior to the expiration of the option (*e.g.*, where the equity security underlying a binary option has been converted by a merger into the right to receive a fixed amount of cash). If the option is out of the money, it will expire unexercised. Otherwise, it will be automatically exercised.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[7] After careful review the Commission finds that the proposed rule change meets the requirements of Section 17A(b)(3)(F) of the Act because, by amending OCC's By-Laws so that OCC may clear and settle options on binary options that have been approved to be listed and traded on Amex and that have been proposed to be listed and traded on CBOE, it should help promote the prompt and accurate clearance and settlement of such securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2007–08) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23768 Filed 12–6–07; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56881; File No. SR–Phlx–2007–72]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 3 and 4 Thereto, Relating to Delisting Securities Underlying Low ADV Options

December 3, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 21, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Phlx. On October 26, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Exchange withdrew Amendment No. 1 on October 31, 2007. The Exchange filed Amendment No. 2 to the proposed rule change on October 31, 2007.[3] On November 29, 2007, the Exchange filed Amendment No. 3 to the proposed rule change.[4] On November 30, 2007, the Exchange filed Amendment No. 4 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment Nos. 3 and 4, from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 1010 (''Withdrawal of Approval of Underlying Securities'') to enable the Exchange to cease listing additional series of equity options and to delist the class of equity options where the option has been trading on the Exchange not less than six (6) months and the Exchange average daily volume (''ADV'') of the entire class of options was less than twenty (20) contracts over the last six (6) month period.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 2 superseded and replaced the original filing in its entirety.

[4] Amendment No. 3 superseded and replaced Amendment No. 2 in its entirety.

[5] Partial Amendment No. 4 made a technical change to the title of Phlx Rule 1010.

The text of the proposed rule change is available at Phlx, the Commission's Public Reference Room, and *http://www.phlx.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Phlx Rule 1010 to enable the Exchange to cease listing additional series of options and to delist the class of options where the option has been listed on the Exchange not less than six (6) months and the ADV of the entire class of options overlying the security over the last six (6) month period was less than twenty (20) contracts.

The Exchange's current Rule 1010 indicates that, allowing for exceptional circumstances, where requirements for continued listing (also known as maintenance criteria) for listed options are not met, additional series of options will not be opened and the options contracts may be delisted. The continued listing criteria in Phlx Rule 1010 is specific to the type of underlying security (*e.g.*, equity securities, Exchange Traded Fund Shares, Trade Issued Receipts, American Depository Receipts, Holding Company Depository Receipts) and may include the number of outstanding shares of the underlying security, the number of security holders, trading volume, and price.

The Exchange proposes to enhance Phlx Rule 1010 by providing that the Exchange will not open for trading any additional series of equity option contracts of the class overlying a security and may delist the class of options if:

- The option has been listed on the Exchange not less than six (6) months; and
- The Exchange average daily volume of the entire class of options over the

last six (6) month period was less than twenty (20) contracts.

The proposal also would provide that if an option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the option when there is no remaining open interest in the product.

The proposal further indicates that if the Exchange determines to delist an option it will notify the affected specialist (the specialist allocated trading in the option in question) not less than ten (10) days before the scheduled delisting date. Within two (2) days after receiving the notification, the specialist has the opportunity to respond in writing with a justification for and/or explanation of the low ADV in the relevant option and why he or she believes that the Exchange should continue to list the option. While the specialist's justification will not be dispositive to the Exchange's decision to delist, the Exchange may take the justification into consideration. The Exchange will indicate its delisting decision in writing to the specialist that submitted the justification letter.

The Exchange believes that its low ADV delisting proposal is consistent with the Phlx maintenance and delisting criteria in Phlx Rule 1010 and should reduce or eliminate the quotation traffic attendant to low volume options listings that may nevertheless experience significant quoting activity. The Exchange believes that this should in turn diminish the total number of strikes that need to be maintained by the Exchange and potentially may thereby reduce technology costs for the Exchange and its member organizations and free up Exchange capacity. The Phlx further believes that expanding the Exchange's ability to manage its quotation traffic should benefit not only the Exchange and its members, but also public and professional traders and ultimately the industry. Moreover, the proposal complements and extends the Exchange's efforts with respect to quote mitigation.[6]

The Exchange notes that the proposal to stop adding series of equity options and to delist low ADV options is similar to low volume options delisting procedures in use by other options exchanges.[7]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and promote just and equitable principles of trade. The proposal would achieve this by enhancing Phlx Rule 1010 regarding maintenance listings to allow for delisting historically low volume options, thereby reducing or eliminating attendant quote traffic.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to rule-comments@sec.gov. Please include File Number SR–Phlx–2007–72 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–72 and should be submitted on or before December 28, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change.

After careful consideration, the Commission finds that the Exchange's proposal to modify its rule regarding maintenance listings to allow for delisting of historically low volume options and to cease listing additional series of options is consistent with the requirements of the Section 6(b) of the Act[10] and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires,

[6] *See, e.g.*, Securities Exchange Act Release Nos. 55080 (January 10, 2007), 72 FR 2324 (January 18, 2007) (SR–Phlx–2006–51) (establishing performance evaluations for streaming quote traders (''SQTs'') and remote SQTs (''RSQTs'') to measure efficient quoting); 55027 (December 29, 2006), 72 FR 1358 (January 11, 2007) (SR–Phlx–2006–53) (permitting options allocations to SQTs and RSQTs by root symbol to promote quoting efficiency); 55114 (January 17, 2007), 72 FR 3185 (January 24, 2007) (SR–Phlx–2006–81) (establishing maximum number of quoters (''MNQ'') in equity options to manage quote traffic and bandwidth capacity); and 56261 (August 15, 2007), 72 FR 47112 (August 22, 2007) (SR–Phlx–2007–51) (increasing the MNQ levels to include additional participants).

[7] *See, e.g.*, Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92) (delisting equity options classes where ADV is less than 20 contracts); 56154 (July 27, 2007), 72 FR 43303 (August 3, 2007) (SR–CBOE–2007–85) (providing exceptions to delisting policy under certain circumstances); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62) (delisting equity options classes where ADV is less than 20 contracts); and 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR–Amex–2006–106) (delisting equity options classes where equity options ADV is less than 25 contracts).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b).

[11] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[12] The Commission proposal should help to mitigate quote traffic of the Exchange and manage capacity concerns by providing the Exchange with the ability to cease listing new series in, and possibly delist, options classes with low trading volume, thus reducing or eliminating quotations in such classes that may experience significant quoting activity, but very little trading activity.

The Phlx has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposal will allow the Phlx to immediately implement its delisting policy, which should help to reduce options quote traffic on the Exchange. The Commission notes that Phlx's proposal is similar to delisting strategies adopted by other exchanges, which also were adopted to mitigate options quote traffic.[13] Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[14] for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change, as amended (SR–Phlx–2007–72), is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23754 Filed 12–6–07; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra,* note 6.

[14] 15 U.S.C. 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 6010]

60-Day Notice of Proposed Information Collection: DS–160, Nonimmigrant Visa Electronic Application, OMB 1405–XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Nonimmigrant Visa Electronic Application.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Consular Affairs, Visa Services (CA/VO).
- *Form Number:* DS–160.
- *Respondents:* All nonimmigrant visa applicants.
- *Estimated Number of Respondents:* 12,300,000.
- *Estimated Number of Responses:* 12,300,000.
- *Average Hours Per Response:* 75 minutes.
- *Total Estimated Burden:* 153,750,000 hours.
- *Frequency:* Once per visa application.
- *Obligation to Respond:* Required to Obtain Benefit.

DATES: The Department will accept comments from the public up to 60 days from December 7, 2007.

ADDRESSES: You may submit comments by any of the following methods:

- *Web*: Persons with access to the internet may also view and comment on this notice by going to the regulations.gov Web site at *http:www.regulations.gov/index/cfm.*
- *Mail (paper, disk, or CD–ROM submissions):* Chief, Legislation and Regulations Division, Visa Services—DS–160, 2401 E Street, NW., Washington DC 20520–30106.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Andrea Lage, who may be reached at (202) 663–1399.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The Nonimmigrant Visa Electronic Application (DS–160) will be used to collect biographical information from individuals seeking a nonimmigrant visa. The consular officer uses the information collected to determine the applicant's eligibility for a visa. This collection combines questions from current information collections DS–156 (Nonimmigrant Visa Application), DS–156E (Nonimmigrant Treaty Trader Investor Application), DS–156K (Nonimmigrant Fiancé Application), DS–157 (Nonimmigrant Supplemental Visa Application), DS–158 (Contact Information and Work History Application), and DS–3052 (Nonimmigrant V Visa Application).

Methodology

The DS–160 will be submitted electronically to the Department via the Internet. The applicant will be instructed to print a confirmation page containing a bar-coded record locator, which will be scanned at the time of processing. Applicants who submit the electronic application will no longer submit paper-based applications to the Department.

Dated: November 20, 2007.

June H. Kunsman,

Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. E7–23814 Filed 12–6–07; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 6009]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Dancer: Degas, Forain, and Toulouse-Lautrec''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 Note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition ''The Dancer: Degas, Forain, and Toulouse-Lautrec'', imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Portland Art Museum, from on or about February 2, 2008, until on or about May 11, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 3, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 07–5981 Filed 12–6–07; 8:45 am]

BILLING CODE 4710–05–M

DEPARTMENT OF STATE

[Public Notice 5972]

Announcement of Meetings of the International Telecommunication Advisory Committee

Summary: This notice announces meetings of the International Telecommunication Advisory committee (ITAC) to prepare advice on U.S. positions on the restructuring of the Radiocommunication Sector of the International Telecommunication Union (ITU–R).

The ITAC will meet as the ITAC–R ''National Committee'' to prepare advice for the U.S. on the structure and chairs of new ITAC–R study groups, and Chairs for the ITU–R working parties, study groups, etc. on December 20, 2007, at the offices of the Boeing Company, 1200 Wilson Boulevard, Arlington, VA, 10 a.m.–Noon, Eastern Standard Time. Meeting details will be posted on the mailing list *itac-r@eblist.state.gov*. People desiring to participate on this list may apply to the secretariat at *minardje@state.gov*.

The meetings are open to the public.

Dated: November 29, 2007.

Anne D. Jillson,

International Communications & Information Policy, Department of State.

[FR Doc. 07–5971 Filed 12–6–07; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Availability of Grant Program Funds for Commercial Vehicle Information Systems and Networks (CVISN) Program

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of FY 2008 Grant Funding Opportunity.

SUMMARY: FMCSA announces that it has published an opportunity to apply for FY 2008 Commercial Vehicle Information Systems and Networks (CVISN) Deployment grant funding on the grants.gov Web site (*http://www.grants.gov*).

DATES: FMCSA will initially consider funding of applications submitted by qualified applicants on or before April 15, 2008. If additional funding remains available, applications submitted after April 15, 2008 will be considered on a case-by-case basis. Funds will not be available for allocation until such time as the FY 2008 U.S. Department of Transportation appropriations legislation is passed and signed into law. Funding is subject to reductions resulting from obligation limitations or rescissions as specified in Safe, Accountable, Flexible, Efficient Transportation Efficiency Act: A Legacy for Users (SAFETEA–LU) or other legislation.

FOR FURTHER INFORMATION CONTACT: Information on the grant, application process, and additional contact information is available at the grants.gov Web site (*http://www.grants.gov*). General information about the CVISN grant is available in The Catalog of Federal Domestic Assistance (CFDA) which can be found on the Internet at *http://www.cfda.gov*. The CFDA number for CVISN is 20.237. You also may contact Ms. Julie Lane, Federal Motor Carrier Safety Administration, Office of Analysis, Research and Technology, at *julie.lane@dot.gov*, 202–385–2391 or Mr. Quon Kwan at *quon.kwan@dot.gov*, 202–385–2389, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Commercial Vehicle Information Systems and Networks (CVISN) grant funding is authorized by Section 4126 of SAFETEA–LU. The expected level of funding for CVISN in FY 2008 is $25,000,000. This is a discretionary grant program that provides funding for States and the District of Columbia to deploy, operate, and maintain elements of their CVISN programs, including commercial vehicle, commercial driver, and carrier-specific information systems and networks. The agency in each State and the District of Columbia that is designated as the primary agency responsible for the development, implementation, and maintenance of CVISN-related systems is eligible to apply for grant funding.

Applicants must be registered with grants.gov to apply for funding. Applicants who have not previously registered with grants.gov should visit: *http://www.grants.gov/applicants/get_registered.jsp*. Registration with grants.gov may take two to five days before the system will allow access to the grant application package. Applicants must download the grant application package, complete the grant application package, and submit the completed grant application package on the Internet at *http://www.grants.gov/applicants/apply_for_grants.jsp*.

Issued on: November 29, 2007.

Terry Shelton,

Associate Administrator for Research and Information Technology.

[FR Doc. E7–23783 Filed 12–6–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2007–29286]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions from the diabetes standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 29 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate commercial motor vehicles in interstate commerce.

DATES: Comments must be received on or before January 7, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2007–29286 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78; Apr. 11, 2000). This information is also available at *http://Docketinfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 29 individuals listed in this notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Douglas D. Aure

Mr. Aure, age 52, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Aure meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Minnesota.

Bruce E. Bivins

Mr. Bivins, 60, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bivins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from New Jersey.

Steven G. Boggs

Mr. Boggs, 52, has had ITDM since 2004. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boggs meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Jessie L. Brock

Mr. Brock, 27, has had ITDM since 2000. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brock meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from Texas.

Francis C. Coryea

Mr. Coryea, 42, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Coryea meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Challis J. Crismore

Mr. Crismore, 38, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Crismore meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Montana.

Colin M. Forer

Mr. Forer, 32, has had ITDM since 1992. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Forer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

Kevin D. Hewston

Mr. Hewston, 47, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hewston meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Arizona.

Daniel C. Horvat

Mr. Horvat, 23, has had ITDM since 2004. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Horvat meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

Richard L. Jarvi

Mr. Jarvi, 50, has had ITDM since 1981. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jarvi meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

David J. Jansen

Mr. Jansen, 38, has had ITDM since 1971. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jansen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Ohio.

Lawrence A. Kibler

Mr. Kibler, 54, has had ITDM since 1967. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kibler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Richard H. Kruse

Mr. Kruse, 64, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kruse meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Iowa.

Dan A. McGee

Mr. McGee, 49, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McGee meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oklahoma.

Arthur J. Medrano

Mr. Medrano, 49, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Medrano meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from California.

Florindo G. Mercado

Mr. Mercado, 58, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mercado meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Montana.

Brian D. Morin

Mr. Morin, 34, has had ITDM since 1987. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Mark R. Perkins

Mr. Perkins, 31, has had ITDM since 1986. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Perkins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Nevada.

Amy L. Polovino

Ms. Polovino, 34, has had ITDM since 2007. Her endocrinologist examined her in 2007 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Polovino meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2007 and certified that she does not have diabetic retinopathy. She holds a Class C chauffeur license from Michigan.

William H. Reinhart

Mr. Reinhart, 53, has had ITDM since 2003. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reinhart meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Daniel J. Russell

Mr. Russell, 35, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Russell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Christopher C. Schuch

Mr. Schuch, 53, has had ITDM since 2000. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schuch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Timothy Short

Mr. Short, 46, has had ITDM since 1996. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Short meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

Wayne Skiles

Mr. Skiles, 58, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Skiles meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

Gregory B. Valentine, Sr.

Mr. Valentine, 41, has had ITDM since 1974. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Valentine meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he has stable proliferative diabetic retinopathy. He holds a Class D operator's license from Tennessee.

James J. Walsh

Mr. Walsh, 64, has had ITDM since 1994. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Walsh meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Uve J. Witsch

Mr. Witsch, 44, has had ITDM since 1999. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Witsch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Steven G. Woltman

Mr. Woltman, 44, has had ITDM since 1979. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Woltman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from California.

John T. Yocum

Mr. Yocum, 52, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Yocum meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the Notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: November 27, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–23785 Filed 12–6–07; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 Notice as a "final rule." However, the 2003 Notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35091]

Pacific Unified Railroad Corporation—Operation Exemption—Kaiser Eagle Mountain Railroad

Pacific Unified Railroad Corporation (PURC), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to operate, pursuant to an agreement with Kaiser Eagle Mountain Railroad (KEM), over KEM's approximately 52-mile rail right-of-way between milepost 52.0 in Eagle Mountain and milepost 0.0 at Ferrum Junction, in Riverside County, CA.

PURC certifies that its projected annual revenues as a result of the transaction would not exceed those that would qualify it as a Class III rail carrier. The transaction is expected to be consummated no sooner than 30 days after the filing of the notice of exemption, or after the December 23, 2007 effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by December 14 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35091, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gerald Lee, Pacific Unified Railroad Corporation, 3200 West End Avenue, Suite 500, Nashville, TN 37203.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 4, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–23813 Filed 12–6–07; 8:45 am]

BILLING CODE 4915–01–P

Corrections

Federal Register
Vol. 72, No. 235
Friday, December 7, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the State Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2008 through September 30, 2009

Correction

In notice document 07–5847 beginning on page 67304 in the issue of Wednesday, November 28, 2007 make the following correction:

On page 67306, in the table, in the nineteenth line, at North Carolina, second column, ''64.00'' should read ''64.60''.

[FR Doc. C7–5847 Filed 12–6–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
December 7, 2007

Part II

Department of the Treasury

Office of the Comptroller of the Currency
12 CFR Part 3

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

Department of the Treasury

Office of Thrift Supervision
12 CFR Parts 559, 560, 563, and 567

Risk-Based Capital Standards: Advanced Capital Adequacy Framework—Basel II; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. OCC–2007–0018]

RIN 1557–AC91

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1261]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC73

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 559, 560, 563, and 567

RIN 1550–AB56; Docket No. OTS 2007–0021

Risk-Based Capital Standards: Advanced Capital Adequacy Framework — Basel II

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the agencies) are adopting a new risk-based capital adequacy framework that requires some and permits other qualifying banks [1] to use an internal ratings-based approach to calculate regulatory credit risk capital requirements and advanced measurement approaches to calculate regulatory operational risk capital requirements. The final rule describes the qualifying criteria for banks required or seeking to operate under the new framework and the applicable risk-based capital requirements for banks that operate under the framework.

DATES: This final rule is effective April 1, 2008.

FOR FURTHER INFORMATION CONTACT:

OCC: Mark Ginsberg, Risk Expert, Capital Policy (202–927–4580) or Ron Shimabukuro, Senior Counsel, Legislative and Regulatory Activities Division (202–874–5090). Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Barbara Bouchard, Deputy Associate Director (202–452–3072 or *barbara.bouchard@frb.gov*) or Anna Lee Hewko, Senior Supervisory Financial Analyst (202–530–6260 or *anna.hewko@frb.gov*), Division of Banking Supervision and Regulation; or Mark E. Van Der Weide, Senior Counsel (202–452–2263 or *mark.vanderweide@frb.gov*), Legal Division. For users of Telecommunications Device for the Deaf (''TDD'') only, contact 202–263–4869.

FDIC: Jason C. Cave, Associate Director, Capital Markets Branch, (202) 898–3548, Bobby R. Bean, Chief, Policy Section, Capital Markets Branch, (202) 898–3575, Kenton Fox, Senior Policy Analyst, Capital Markets Branch, (202) 898–7119, Division of Supervision and Consumer Protection; or Michael B. Phillips, Counsel, (202) 898–3581, Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Michael D. Solomon, Director, Capital Policy, Supervision Policy (202) 906–5654; David W. Riley, Senior Analyst, Capital Policy (202) 906–6669; Austin Hong, Senior Analyst, Capital Policy (202) 906–6389; or Karen Osterloh, Special Counsel, Regulations and Legislation Division (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Table of Contents

[1] For simplicity, and unless otherwise indicated, this final rule uses the term ''bank'' to include banks, savings associations, and bank holding companies (BHCs). The terms ''bank holding company'' and ''BHC'' refer only to bank holding companies regulated by the Board and do not include savings and loan holding companies regulated by the OTS.

I. Introduction

A. Executive Summary of the Final Rule

On September 25, 2006, the agencies issued a joint notice of proposed rulemaking (proposed rule or proposal) (71 FR 55830) seeking public comment on a new risk-based regulatory capital framework for banks.[2] The agencies previously issued an advance notice of proposed rulemaking (ANPR) related to the new risk-based regulatory capital framework (68 FR 45900, August 4, 2003). The proposed rule was based on a series of releases from the Basel Committee on Banking Supervision (BCBS), culminating in the BCBS's comprehensive June 2006 release entitled ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework'' (New Accord).[3] The New Accord sets forth a ''three pillar'' framework encompassing risk-based capital requirements for credit risk, market risk, and operational risk (Pillar 1); supervisory review of capital adequacy (Pillar 2); and market discipline through enhanced public disclosures (Pillar 3). The New Accord includes several methodologies for determining a bank's risk-based capital requirements for credit, market, and operational risk.

The proposed rule included the advanced capital methodologies from the New Accord, including the advanced internal ratings-based (IRB) approach for credit risk and the advanced measurement approaches (AMA) for operational risk (together, the advanced approaches). The IRB approach uses risk parameters determined by a bank's internal systems in the calculation of the bank's credit risk capital requirements. The AMA relies on a bank's internal estimates of its operational risks to generate an operational risk capital requirement for the bank.[4]

The agencies now are adopting this final rule implementing a new risk-based regulatory capital framework, based on the New Accord, that is mandatory for some U.S. banks and optional for others. While the New Accord includes several methodologies for determining risk-based capital requirements, the agencies are adopting only the advanced approaches at this time.

The agencies received approximately 90 public comments on the proposed rule from banking organizations, trade associations representing the banking or financial services industry, supervisory authorities, and other interested parties. This section of the preamble highlights several fundamental issues that commenters raised about the agencies' proposal and briefly describes how the agencies have responded to those issues in the final rule. More detail is provided in the preamble sections below. Overall, commenters supported the development of the framework and the move to more risk-sensitive capital requirements. One overarching issue, however, was the areas where the proposal differed from the New Accord. Commenters said the divergences generally created competitive problems, raised home-host issues, entailed extra cost and regulatory burden, and did not necessarily improve the overall safety and soundness of banks subject to the rule.

Commenters also generally disagreed with the agencies' proposal to adopt only the advanced approaches from the New Accord. Further, commenters objected to the agencies' retention of the leverage ratio, the transitional arrangements in the proposal, and the 10 percent numerical benchmark for identifying material aggregate reductions in risk-based capital requirements to be used for evaluating and responding to capital outcomes during the parallel run and transitional floor periods (discussed below). Commenters also noted numerous technical issues with the proposed rule.

As noted in an interagency press release issued July 20, 2007 (*Banking Agencies Reach Agreement on Basel II Implementation*), the agencies have agreed to eliminate the language from

[2] The agencies also issued proposed changes to the risk-based capital rule for market risk in a separate notice of proposed rulemaking (71 FR 55958, September 25, 2006). A final rule on that proposal is under development and will be issued in the near future.

[3] The BCBS is a committee of banking supervisory authorities established by the central bank governors of the G–10 countries in 1975. The BCBS issued the New Accord to modernize its first capital Accord, which was endorsed by the BCBS members in 1988 and implemented by the agencies in 1989. The New Accord, the 1988 Accord, and other documents issued by the BCBS are available through the Bank for International Settlements' Web site at *http://www.bis.org.*

[4] The agencies issued draft guidance on the advanced approaches. *See* 72 FR 9084 (February 28, 2007).

the preamble concerning a 10 percent limitation on aggregate reductions in risk-based capital requirements. The press release also stated that the agencies are retaining intact the transitional floor periods (see preamble sections I.E. and III.A.2.). In addition, while not specifically mentioned in the press release, the agencies are retaining the leverage ratio and the prompt corrective action (PCA) regulations without modification.

The final rule adopts without change the proposed criteria for identifying core banks (banks required to apply the advanced approaches) and continues to permit other banks (opt-in banks) to adopt the advanced approaches if they meet the applicable qualification requirements. Core banks are those with consolidated total assets (excluding assets held by an insurance underwriting subsidiary of a bank holding company) of $250 billion or more or with consolidated total on-balance-sheet foreign exposure of $10 billion or more. A depository institution (DI) also is a core bank if it is a subsidiary of another DI or bank holding company that uses the advanced approaches. The final rule also provides that a bank's primary Federal supervisor may determine that application of the final rule is not appropriate in light of the bank's asset size, level of complexity, risk profile, or scope of operations (see preamble sections II.A. and B.).

As noted above, the final rule includes only the advanced approaches. The July 2007 interagency press release stated that the agencies have agreed to issue a proposed rule that would provide non-core banks with the option to adopt an approach consistent with the standardized approach included in the New Accord. This new proposal (the standardized proposal) will replace the earlier proposal to adopt the so-called Basel IA option (Basel 1A proposal).[5] The press release also noted the agencies' intention to finalize the standardized proposal before core banks begin the first transitional floor period under this final rule.

In response to commenters' concerns that some aspects of the proposed rule would result in excessive regulatory burden without commensurate safety and soundness enhancements, the agencies included a principle of conservatism in the final rule. In general, under this principle, in limited situations, a bank may choose not to apply a provision of the rule to one or more exposures if the bank can demonstrate on an ongoing basis to the satisfaction of its primary Federal supervisor that not applying the provision would, in all circumstances, unambiguously generate a risk-based capital requirement for each such exposure that is greater than that which would otherwise be required under the regulation, and the bank meets other specified requirements (see preamble section II.D.).

In the proposal, the agencies modified the definition of default for wholesale exposures from that in the New Accord to address issues commenters had raised on the ANPR. Commenters objected to the agencies' modified definition of default for wholesale exposures, however, asserting that a definition different from the New Accord would result in competitive inequities and significant implementation burden without associated supervisory benefit. In response to these concerns, the agencies have adopted a definition of default for wholesale exposures that is consistent with the New Accord (see preamble section III.B.2.). For retail exposures, the final rule retains the proposed definition of default and clarifies that, subject to certain considerations, a foreign subsidiary of a U.S. bank may, in its consolidated risk-based capital calculations, use the applicable host jurisdiction definition of default for retail exposures of the foreign subsidiary in that jurisdiction (see preamble section III.B.2.).

Another concept introduced in the proposal that was not in the New Accord was the expected loss given default (ELGD) risk parameter. ELGD had four functions in the proposed rule—as a component of the calculation of expected credit loss (ECL) in the numerator of the risk-based capital ratios; in the expected loss (EL) component of the IRB risk-based capital formulas; as a floor on the value of the loss given default (LGD) risk parameter; and as an input into a supervisory mapping function. Many commenters objected to the inclusion of ELGD as a departure from the New Accord that would create regulatory burden and competitive inequity. Many commenters also objected to the supervisory mapping function, which the agencies intended as an alternative for banks that were not able to estimate reliably the LGD risk parameter. The agencies have eliminated ELGD from the final rule. Banks are required to estimate only the LGD risk parameter, which reflects economic downturn conditions (see preamble section III.B.3.). The supervisory mapping function also has been eliminated from the rule.

Commenters also objected to the agencies' decision not to include a distinct risk weight function for exposures to small- and medium-size enterprises (SMEs) as provided in the New Accord. In the proposal, the agencies noted they were not aware of compelling evidence that smaller firms with the same probability of default (PD) and LGD as larger firms are subject to less systemic risk than is already reflected in the wholesale risk-based capital functions. The agencies continue to believe an SME-specific risk weight function is not supported by sufficient evidence and might give rise to competitive inequities across U.S. banks, and have not adopted such a function in the final rule (see preamble section V.A.1.)

With regard to the proposed treatment for securitization exposures, commenters raised a number of technical issues. Many objected to the proposed definition of a securitization exposure, which included exposures to investment funds with material liabilities (including exposures to hedge funds). The agencies agree with commenters that the proposed definition for securitization exposures was quite broad and captured some exposures that would more appropriately be treated under the wholesale or equity frameworks. To limit the scope of the IRB securitization framework, the agencies have modified the definition of traditional securitization in the final rule as described in preamble section V.A.3. Technical issues related to securitization exposures are discussed in preamble sections V.A.3. and V.E.

For equity exposures, commenters focused on the proposal's lack of a grandfathering period. The New Accord provides national discretion for each implementing jurisdiction to adopt a grandfather period for equity exposures. Commenters asserted that this omission would result in competitive inequity for U.S. banks as compared to other internationally active institutions. The agencies believe that, overall, the proposal's approach to equity exposures results in a competitive risk-based capital requirement. The final rule does not include a grandfathering provision, and the agencies have adopted the proposed treatment for equity exposures without significant change (see preamble section V.F.).

A number of commenters raised issues related to operational risk. Most significantly, commenters noted that activities besides securities processing and credit card fraud have highly predictable and reasonably stable losses and should be considered for operational risk offsets. The agencies believe that the proposed definition of

[5] 71 FR 77445 (Dec. 26, 2006).

eligible operational risk offsets allows for the consideration of other activities in a flexible and prudent manner and, thus, are retaining the proposed definition in the final rule. Commenters also noted that the proposal appeared to place limits on the use of operational risk mitigants. The agencies have provided flexibility in this regard and under the final rule will take into consideration whether a particular operational risk mitigant covers potential operational losses in a manner equivalent to holding regulatory capital (see preamble sections III.B.5. and V.I.).

Many commenters expressed concern that the proposed public disclosures were excessive and would hinder, rather than facilitate, market discipline by requiring banks to disclose information that would not be well understood by or useful to the market. Commenters also expressed concern about possible disclosure of proprietary information. The agencies believe that it is important to retain the vast majority of the proposed disclosures, which are consistent with the New Accord. These disclosures will enable market participants to gain key insights regarding a bank's capital structure, risk exposures, risk assessment processes, and, ultimately, capital adequacy. The agencies have modified the final rule to provide flexibility regarding proprietary information.

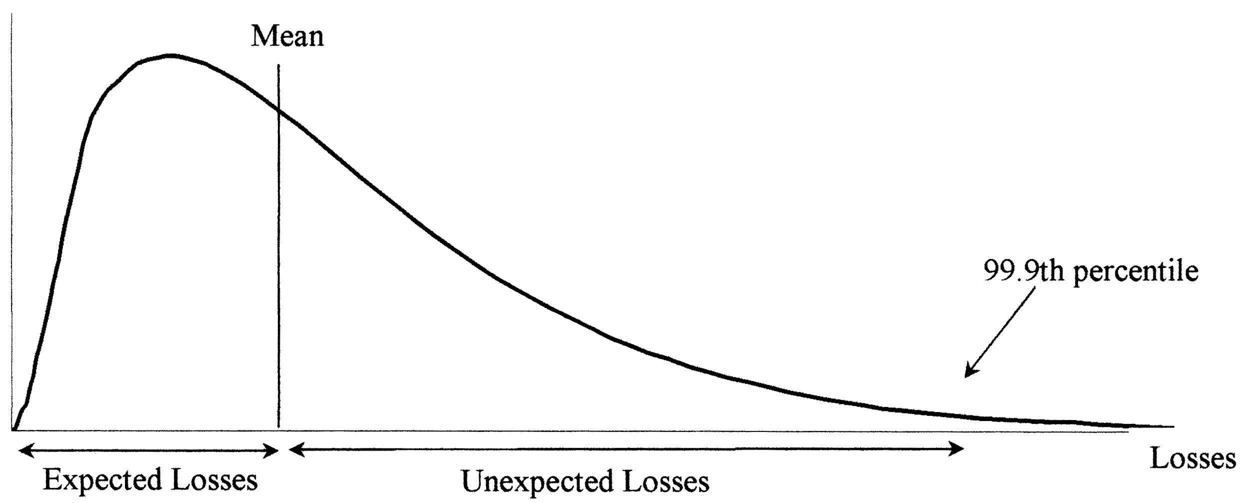
B. Conceptual Overview

This final rule is intended to produce risk-based capital requirements that are more risk-sensitive than those produced under the agencies' existing risk-based capital rules (general risk-based capital rules). In particular, the IRB approach requires banks to assign risk parameters to wholesale exposures and retail segments and provides specific risk-based capital formulas that must be used to transform these risk parameters into risk-based capital requirements.

The framework is based on ''value-at-risk'' (VaR) modeling techniques that measure credit risk and operational risk. Because bank risk measurement practices are both continually evolving and subject to uncertainty, the framework should be viewed as an effort to improve the risk sensitivity of the risk-based capital requirements for banks, rather than as an effort to produce a statistically precise measurement of risk.

The framework's conceptual foundation is based on the view that risk can be quantified through the estimation of specific characteristics of the probability distribution of potential losses over a given time horizon. This approach assumes that a suitable estimate of that probability distribution, or at least of the specific characteristics to be measured, can be produced. Figure 1 illustrates some of the key concepts associated with the framework. The figure shows a probability distribution of potential losses associated with some time horizon (for example, one year). It could reflect, for example, credit losses, operational losses, or other types of losses.

Figure 1 – Probability Distribution of Potential Losses



The area under the curve to the right of a particular loss amount is the probability of experiencing losses exceeding this amount within a given time horizon. The figure also shows the statistical mean of the loss distribution, which is equivalent to the amount of loss that is ''expected'' over the time horizon. The concept of ''expected loss'' (EL) is distinguished from that of ''unexpected loss'' (UL), which represents potential losses over and above the EL amount. A given level of UL can be defined by reference to a particular percentile threshold of the probability distribution. For example, in the figure UL is measured at the 99.9th percentile level and thus is equal to the value of the loss distribution corresponding to the 99.9th percentile, less the amount of EL. This is shown graphically at the bottom of the figure.

The particular percentile level chosen for the measurement of UL is referred to as the ''confidence level'' or the ''soundness standard'' associated with the measurement. If capital is available to cover losses up to and including this percentile level, then the bank should remain solvent in the face of actual losses of that magnitude. Typically, the choice of confidence level or soundness standard reflects a very high percentile level, so that there is a very low estimated probability that actual losses would exceed the UL amount associated with that confidence level or soundness standard.

Assessing risk and assigning regulatory capital requirements by reference to a specific percentile of a probability distribution of potential losses is commonly referred to as a VaR approach. Such an approach was adopted by the FDIC, Board, and OCC for assessing a bank's risk-based capital requirements for market risk in 1996 (market risk rule). Under the market risk rule, a bank's own internal models are used to estimate the 99th percentile of the bank's market risk loss distribution over a ten-business-day horizon. The bank's market risk capital requirement is based on this VaR estimate, generally multiplied by a factor of three. The agencies implemented this multiplication factor to provide a prudential buffer for market volatility and modeling uncertainty.

1. The IRB Approach for Credit Risk

The conceptual foundation of this final rule's approach to credit risk capital requirements is similar to the market risk rule's approach to market risk capital requirements, in the sense that each is VaR-oriented. Nevertheless, there are important differences between the IRB approach and the market risk rule. The current market risk rule specifies a nominal confidence level of 99.0 percent and a ten-business-day horizon, but otherwise provides banks with substantial modeling flexibility in determining their market risk loss distribution and capital requirements. In contrast, the IRB approach for assessing credit risk capital requirements is based on a 99.9 percent nominal confidence level, a one-year horizon, and a supervisory model of credit losses embodying particular assumptions about the underlying drivers of portfolio credit risk, including loss correlations among different asset types.[6]

The IRB approach is broadly similar to the credit VaR approaches used by a number of banks as the basis for their internal assessment of the economic capital necessary to cover credit risk. It is common for a bank's internal credit risk models to consider a one-year loss horizon and to focus on a high loss threshold confidence level. As with the internal credit VaR models used by banks, the output of the risk-based capital formulas in the IRB approach is an estimate of the amount of credit losses above ECL over a one-year horizon that would only be exceeded a small percentage of the time. The agencies believe that a one-year horizon is appropriate because it balances the difficulty of easily or rapidly exiting non-trading positions against the possibility that in many cases a bank can cover credit losses by raising additional capital should the underlying credit problems manifest themselves gradually. The nominal confidence level of the IRB risk-based capital formulas (99.9 percent) means that if all the assumptions in the IRB supervisory model for credit risk were correct for a bank, there would be less than a 0.1 percent probability that credit losses at the bank in any year would exceed the IRB risk-based capital requirement.[7]

As noted above, the supervisory model of credit risk underlying the IRB approach embodies specific assumptions about the economic drivers of portfolio credit risk at banks. As with any modeling approach, these assumptions represent simplifications of very complex real-world phenomena and, at best, are only an approximation of the actual credit risks at any bank. If these assumptions (described in greater detail below) are incorrect or otherwise do not characterize a given bank precisely, the actual confidence level implied by the IRB risk-based capital formulas may exceed or fall short of a true 99.9 percent confidence level.

In combination with other supervisory assumptions and parameters underlying the IRB approach, the approach's 99.9 percent nominal confidence level reflects a judgmental pooling of available information, including supervisory experience. The framework underlying this final rule reflects a desire on the part of the agencies to achieve (i) risk-based capital requirements that are reflective of relative risk across different assets and that are broadly consistent with maintaining at least an investment-grade rating (for example, at least BBB) on the liabilities funding those assets, even in periods of economic adversity; and (ii) for the U.S. banking system as a whole, aggregate minimum regulatory capital requirements that are not a material reduction from the aggregate minimum regulatory capital requirements under the general risk-based capital rules.

A number of important explicit general assumptions and specific parameters are built into the IRB approach to make the framework applicable to a range of banks and to obtain tractable information for calculating risk-based capital requirements. Chief among the assumptions embodied in the IRB approach are: (i) Assumptions that a bank's credit portfolio is infinitely granular; (ii) assumptions that loan defaults at a bank are driven by a single, systematic risk factor; (iii) assumptions that systematic and non-systematic risk factors are log-normal random variables; and (iv) assumptions regarding correlations among credit losses on various types of assets.

The specific risk-based capital formulas in this final rule require the bank to estimate certain risk parameters for its wholesale and retail exposures, which the bank may do using a variety of techniques. These risk parameters are PD, LGD, exposure at default (EAD), and, for wholesale exposures, effective remaining maturity (M). The proposed rule included an additional risk parameter, ELGD. As discussed in section III.B.3. of the preamble, the agencies have eliminated the ELGD risk parameter from the final rule. The risk-based capital formulas into which the estimated risk parameters are inserted are simpler than the economic capital methodologies typically employed by banks, which often require complex computer simulations. In particular, an important property of the IRB risk-based capital formulas is portfolio invariance. That is, the risk-based capital requirement for a particular exposure generally does not depend on the other exposures held by the bank. Like the general risk-based capital rules, the total credit risk capital requirement for a bank's wholesale and retail exposures is the sum of the credit risk capital requirements on individual wholesale exposures and segments of retail exposures.

The IRB risk-based capital formulas contain supervisory asset value correlation (AVC) factors, which have a significant impact on the capital requirements generated by the formulas. The AVC assigned to a given portfolio of exposures is an estimate of the degree to which any unanticipated changes in the financial conditions of the underlying obligors of the exposures are correlated (that is, would likely move up and down together). High correlation of exposures in a period of economic downturn conditions is an area of supervisory concern. For a portfolio of exposures having the same risk parameters, a larger AVC implies less

[6] The theoretical underpinnings for the supervisory model of credit risk underlying the IRB approach are provided in a paper by Michael Gordy, ''A Risk-Factor Model Foundation for Ratings-Based Bank Capital Rules,'' *Journal of Financial Intermediation,* July 2003. The IRB formulas are derived as an application of these results to a single-factor CreditMetrics™-style model. For mathematical details on this model, see Michael Gordy, ''A Comparative Anatomy of Credit Risk Models,'' *Journal of Banking and Finance,* January 2000, or H.U. Koyluogu and A. Hickman, ''Reconcilable Differences,'' *Risk,* October 1998. For a less technical overview of the IRB formulas, see the BCBS's ''An Explanatory Note on the Basel II Risk Weight Functions,'' July 2005 (BCBS Explanatory Note). The document can be found on the Bank for International Settlements Web site at *http://www.bis.org.*

[7] Banks' internal economic capital models typically focus on measures of equity capital, whereas the total regulatory capital measure underlying this rule includes not only equity capital, but also certain debt and hybrid instruments, such as subordinated debt. Thus, the 99.9 percent nominal confidence level embodied in the IRB approach is not directly compatable to the nominal solvency standards underpinning banks' economic capital models.

diversification within the portfolio, greater overall systematic risk, and, hence, a higher risk-based capital requirement.[8] For example, a 15 percent AVC for a portfolio of residential mortgage exposures would result in a lower risk-based capital requirement than a 20 percent AVC and a higher risk-based capital requirement than a 10 percent AVC.

The AVCs that appear in the IRB risk-based capital formulas for wholesale exposures decline with increasing PD; that is, the IRB risk-based capital formulas generally imply that a group of low-PD wholesale exposures are more correlated than a group of high-PD wholesale exposures. Thus, under the rule, a low-PD wholesale exposure would have a higher relative risk-based capital requirement than that implied by its PD were the AVC in the IRB risk-based capital formulas for wholesale exposures fixed rather than a decreasing function of PD. The AVCs included in the IRB risk-based capital formulas for both wholesale and retail exposures reflect a combination of supervisory judgment and empirical evidence.[9] However, the historical data available for estimating correlations among retail exposures, particularly for non-mortgage retail exposures, was more limited than was the case with wholesale exposures. As a result, supervisory judgment played a greater role. Moreover, the flat 15 percent AVC for residential mortgage exposures is based largely on supervisory experience with and analysis of traditional long-term, fixed-rate mortgages.

Several commenters stated that the proposed AVCs for wholesale exposures were too high in general, and a few claimed that, in particular, the AVCs for multi-family residential real estate exposures should be lower. Other commenters suggested that the AVCs of wholesale exposures should be a function of obligor size rather than PD. Similarly, several commenters maintained that the proposed AVCs for retail exposures were too high. Some of these commenters suggested that the AVCs for qualifying revolving exposures (QREs), such as credit cards, should be in the range of 1 to 2 percent, not 4 percent as proposed. Similarly, some of those commenters opposed the proposed flat 15 percent AVC for residential mortgage exposures; one commenter suggested that the agencies should consider employing lower AVCs for home equity loans and lines of credit (HELOCs) to take into account their shorter maturity relative to traditional mortgage exposures.

However, most commenters recognized that the proposed AVCs were consistent with those in the New Accord and recommended that the agencies use the AVCs contained in the New Accord to avoid international competitive inequity and unnecessary burden. Several commenters suggested that the agencies should reconsider the AVCs going forward, working with the BCBS.

The agencies agree with the prevailing view of the commenters that using the AVCs in the New Accord alleviates a potential source of international inconsistency and implementation burden. The final rule therefore maintains the proposed AVCs. As the agencies gain more experience with the advanced approaches, they may revisit the AVCs for wholesale exposures and retail exposures, along with other calibration issues identified during the parallel run and transitional floor periods (as described below) and make changes to the rule as necessary. The agencies would address this issue working with the BCBS and other supervisory and regulatory authorities, as appropriate.

Another important conceptual element of the IRB approach concerns the treatment of ECL. The IRB approach assumes that reserves should cover ECL while capital should cover credit losses exceeding ECL (that is, unexpected credit losses). Accordingly, the final rule, consistent with the proposal and the New Accord, removes ECL from the risk-weighted assets calculation but requires a bank to compare its ECL to its eligible credit reserves (as defined below). If a bank's ECL exceeds its eligible credit reserves, the bank must deduct the excess ECL amount 50 percent from tier 1 capital and 50 percent from tier 2 capital. If a bank's eligible credit reserves exceed its ECL, the bank may include the excess eligible credit reserves amount in tier 2 capital, up to 0.6 percent of the bank's credit risk-weighted assets.[10] This treatment is intended to maintain a capital incentive to reserve prudently and ensure that ECL over a one-year horizon is covered either by reserves or capital. This treatment also recognizes that prudent reserving that considers probable losses over the life of a loan may result in a bank holding reserves in excess of ECL measured with a one-year horizon. The BCBS calibrated the 0.6 percent limit on inclusion of excess reserves in tier 2 capital to be approximately as restrictive as the existing cap on the inclusion of allowance for loan and lease losses (ALLL) under the 1988 Accord, based on data obtained in the BCBS's Third Quantitative Impact Study (QIS–3).[11]

In developing the New Accord, the BCBS sought broadly to maintain the current overall level of minimum risk-based capital requirements within the banking system. Using data from QIS–3, the BCBS conducted an analysis of the risk-based capital requirements that would be generated under the New Accord. Based on this analysis, the BCBS concluded that a ''scaling factor'' (multiplier) should apply to credit risk-weighted assets. The BCBS, in the New Accord, indicated that the best estimate of the scaling factor was 1.06. In May 2006, the BCBS decided to maintain the 1.06 scaling factor based on the results of a fourth quantitative impact study (QIS–4) conducted in some jurisdictions, including the United States, and a fifth quantitative impact study (QIS–5), not conducted in the United States.[12] The BCBS noted that national supervisory authorities will continue to monitor capital requirements during implementation of the New Accord, and that the BCBS, in turn, will monitor national experiences with the framework.

The agencies generally agree with the BCBS regarding calibration of the New Accord. Therefore, consistent with the New Accord and the proposed rule, the final rule contains a scaling factor of 1.06 for credit-risk-weighted assets. As the agencies gain more experience with the advanced approaches, the agencies will revisit the scaling factor along with other calibration issues identified during the parallel run and transitional floor periods (described below) and will make changes to the rule as necessary, working with the BCBS and other supervisory and regulatory authorities, as appropriate.

2. The AMA for Operational Risk

The final rule also includes the AMA for determining risk-based capital requirements for operational risk. Under the final rule (consistent with the proposed rule), operational risk is defined as the risk of loss resulting from inadequate or failed internal processes, people, and systems or from external events. This definition of operational risk includes legal risk—which is the risk of loss (including litigation costs,

[8] *See* BCBS Explanatory Note.

[9] *See* BCBS Explanatory Note, section 5.3.

[10] In contrast, under the general risk-based capital rules, the allowance for loan and lease losses (ALLL) may be included in tier 2 capital up to 1.25 percent of total risk-weighted assets.

[11] BCBS, ''QIS 3: Third Quantitative Impact Study,'' May 2003.

[12] BCBS press release, ''Basel Committee maintains calibration of Base II Framework,'' May 24, 2006.

settlements, and regulatory fines) resulting from the failure of the bank to comply with laws, regulations, prudent ethical standards, and contractual obligations in any aspect of the bank's business—but excludes strategic and reputational risks.

Under the AMA, a bank must use its internal operational risk management systems and processes to assess its exposure to operational risk. Given the complexities involved in measuring operational risk, the AMA provides banks with substantial flexibility and, therefore, does not require a bank to use specific methodologies or distributional assumptions. Nevertheless, a bank using the AMA must demonstrate to the satisfaction of its primary Federal supervisor that its systems for managing and measuring operational risk meet established standards, including producing an estimate of operational risk exposure that meets a one-year, 99.9th percentile soundness standard. A bank's estimate of operational risk exposure includes both expected operational loss (EOL) and unexpected operational loss (UOL) and forms the basis of the bank's risk-based capital requirement for operational risk.

The AMA allows a bank to base its risk-based capital requirement for operational risk on UOL alone if the bank can demonstrate to the satisfaction of its primary Federal supervisor that the bank has eligible operational risk offsets, such as certain operational risk reserves, that equal or exceed the bank's EOL. To the extent that eligible operational risk offsets are less than EOL, the bank's risk-based capital requirement for operational risk must incorporate the shortfall.

C. Overview of Final Rule

The final rule maintains the general risk-based capital rules' minimum tier 1 risk-based capital ratio of 4.0 percent and total risk-based capital ratio of 8.0 percent. The components of tier 1 and total capital in the final rule are also the same as in the general risk-based capital rules, with a few adjustments described in more detail below. The primary difference between the general risk-based capital rules and the final rule is the methodologies used for calculating risk-weighted assets. Banks applying the final rule generally must use their internal risk measurement systems to calculate the inputs for determining the risk-weighted asset amounts for (i) general credit risk (including wholesale and retail exposures); (ii) securitization exposures; (iii) equity exposures; and (iv) operational risk. In certain cases, however, banks must use external ratings or supervisory risk weights to determine risk-weighted asset amounts. Each of these areas is discussed below.

Banks using the final rule also are subject to supervisory review of their capital adequacy (Pillar 2) and certain public disclosure requirements to foster transparency and market discipline (Pillar 3). In addition, each bank using the advanced approaches remains subject to the tier 1 leverage ratio requirement,[13] and each DI (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) using the advanced approaches remains subject to the prompt corrective action (PCA) thresholds.[14] Banks using the advanced approaches also remain subject to the market risk rule, where applicable.

Under the final rule, a bank must identify whether each of its on- and off-balance sheet exposures is a wholesale, retail, securitization, or equity exposure. Assets that are not defined by any exposure category (and certain immaterial portfolios of exposures) generally are assigned risk-weighted asset amounts equal to their carrying value (for on-balance sheet exposures) or notional amount (for off-balance sheet exposures).

Wholesale exposures under the final rule include most credit exposures to companies, sovereigns, and other governmental entities. For each wholesale exposure, a bank must assign four quantitative risk parameters: PD (which is expressed as a decimal (that is, 0.01 corresponds to 1 percent) and is an estimate of the probability that an obligor will default over a one-year horizon); LGD (which is expressed as a decimal and reflects an estimate of the economic loss rate if a default occurs during economic downturn conditions); EAD (which is measured in dollars and is an estimate of the amount that would be owed to the bank at the time of default); and M (which is measured in years and reflects the effective remaining maturity of the exposure). Banks may factor into their risk parameter estimates the risk mitigating impact of collateral, credit derivatives, and guarantees that meet certain criteria. Banks must input the risk parameters for each wholesale exposure into an IRB risk-based capital formula to determine the risk-based capital requirement for the exposure.

Retail exposures under the final rule include most credit exposures to individuals and small credit exposures to businesses that are managed as part of a segment of exposures with similar risk characteristics and not managed on an individual-exposure basis. A bank must classify each of its retail exposures into one of three retail subcategories—residential mortgage exposures; QREs, such as credit cards and overdraft lines; and other retail exposures. Within these three subcategories, the bank must group exposures into segments with similar risk characteristics. The bank must then assign the risk parameters PD, LGD, and EAD to each retail segment. The bank may take into account the risk mitigating impact of collateral and guarantees in the segmentation process and in the assignment of risk parameters to retail segments. Like wholesale exposures, the risk parameters for each retail segment are used as inputs into an IRB risk-based capital formula to determine the risk-based capital requirement for the segment.

For securitization exposures, the bank must apply one of three general approaches, subject to various conditions and qualifying criteria: the Ratings-Based Approach (RBA), which uses external ratings to risk-weight exposures; the Internal Assessment Approach (IAA), which uses internal ratings to risk-weight exposures to asset-backed commercial paper programs (ABCP programs); or the Supervisory Formula Approach (SFA), which uses bank inputs that are entered into a supervisory formula to risk-weight exposures. Securitization exposures in the form of gain-on-sale or credit-enhancing interest-only strips (CEIOs)[15] and securitization exposures that do not qualify for the RBA, the IAA, or the SFA must be deducted from regulatory capital.

Banks may use an internal models approach (IMA) for determining risk-based capital requirements for equity exposures, subject to certain qualifying criteria and floors. If a bank does not have a qualifying internal model for equity exposures, or chooses not to use such a model, the bank must apply a simple risk weight approach (SRWA) in which publicly traded equity exposures

[13] See 12 CFR part 3.6(b) and (c) (national banks); 12 CFR part 208, appendix B (state member banks); 12 CFR part 225, appendix D (bank holding companies); 12 CFR 325.3 (state nonmember banks); 12 CFR 567.2(a)(2) and 567.8 (savings associations).

[14] See 12 CFR part 6 (national banks); 12 CFR part 208, subpart D (state member banks); 12 CFR 325.103 (state nonmember banks); 12 CFR part 565 (savings associations). In addition, savings associations remain subject to the tangible capital requirement at 12 CFR 567.2(a)(3) and 567.9.

[15] A CEIO is an on-balance sheet asset that, in form or in substance, (i) represents the contractual right to receive some or all of the interest and no more than a minimal amount of principal due on the underlying exposures of a securitization and (ii) exposes the holder to credit risk directly or indirectly associated with the underlying exposures that exceeds its pro rata claim on the underlying exposures, whether through subordination provisions or other credit-enhancement techniques.

generally are assigned a 300 percent risk weight and non-publicly traded equity exposures generally are assigned a 400 percent risk weight. Under both the IMA and the SRWA, equity exposures to certain entities or made pursuant to certain statutory authorities (such as community development laws) are subject to a 0 to 100 percent risk weight.

Banks must develop qualifying AMA systems to determine risk-based capital requirements for operational risk. Under the AMA, a bank must use its own methodology to identify operational loss events, measure its exposure to operational risk, and assess a risk-based capital requirement for operational risk.

Under the final rule, a bank must calculate its tier 1 and total risk-based capital ratios by dividing tier 1 capital by total risk-weighted assets and by dividing total qualifying capital by total risk-weighted assets, respectively. To calculate total risk-weighted assets, a bank must first convert the dollar risk-based capital requirements for exposures produced by the IRB risk-based capital approaches and the AMA into risk-weighted asset amounts by multiplying the capital requirements by 12.5 (the inverse of the overall 8.0 percent risk-based capital requirement). After determining the risk-weighted asset amounts for credit risk and operational risk, a bank must sum these amounts and then subtract any excess eligible credit reserves not included in tier 2 capital to determine total risk-weighted assets.

The final rule contains specific public disclosure requirements to provide important information to market participants on the capital structure, risk exposures, risk assessment processes, and, hence, the capital adequacy of a bank. The public disclosure requirements apply only to the DI or bank holding company representing the top consolidated level of the banking group that is subject to the advanced approaches, unless the entity is a subsidiary of a non-U.S. banking organization that is subject to comparable disclosure requirements in its home jurisdiction. All banks subject to the rule, however, must disclose total and tier 1 risk-based capital ratios and the components of these ratios. The agencies also proposed a package of regulatory reporting templates for the agencies' use in assessing and monitoring the levels and components of bank risk-based capital requirements under the advanced approaches.[16] These templates will be finalized shortly.

The agencies are aware that the fair value option in generally accepted accounting principles as used in the United States (GAAP) raises potential risk-based capital issues not contemplated in the development of the New Accord. The agencies will continue to analyze these issues and may make changes to this rule at a future date as necessary. The agencies would address these issues working with the BCBS and other supervisory and regulatory authorities, as appropriate.

D. Structure of Final Rule

The agencies are implementing a regulatory framework for the advanced approaches in which each agency has an advanced approaches appendix that incorporates (i) definitions of tier 1 and tier 2 capital and associated adjustments to the risk-based capital ratio numerators, (ii) the qualification requirements for using the advanced approaches, and (iii) the details of the advanced approaches.[17] The agencies also are incorporating their respective market risk rules, by cross-reference.[18]

In this final rule, as in the proposed rule, the agencies are not restating the elements of tier 1 and tier 2 capital, which largely remain the same as under the general risk-based capital rules. Adjustments to the risk-based capital ratio numerators specific to banks applying the final rule are in part II of the rule and explained in greater detail in section IV of this preamble.

The final rule has eight parts. Part I identifies criteria for determining which banks are subject to the rule, provides key definitions, and sets forth the minimum risk-based capital ratios. Part II describes the adjustments to the numerator of the regulatory capital ratios for banks using the advanced approaches. Part III describes the qualification process and provides qualification requirements for obtaining supervisory approval for use of the advanced approaches. This part incorporates critical elements of supervisory oversight of capital adequacy (Pillar 2).

Parts IV through VII address the calculation of risk-weighted assets. Part IV provides the risk-weighted assets calculation methodologies for wholesale and retail exposures; on-balance sheet assets that do not meet the regulatory definition of a wholesale, retail, securitization, or equity exposure; and certain immaterial portfolios of credit exposures. This part also describes the risk-based capital treatment for over-the-counter (OTC) derivative contracts, repo-style transactions, and eligible margin loans. In addition, this part describes the methodologies for reflecting credit risk mitigation in risk-weighted assets for wholesale and retail exposures. Furthermore, this part sets forth the risk-based capital requirements for failed and unsettled securities, commodities, and foreign exchange transactions.

Part V identifies operating criteria for recognizing risk transference in the securitization context and outlines the approaches for calculating risk-weighted assets for securitization exposures. Part VI describes the approaches for calculating risk-weighted assets for equity exposures. Part VII describes the calculation of risk-weighted assets for operational risk. Finally, Part VIII provides public disclosure requirements for banks employing the advanced approaches (Pillar 3).

The structure of the preamble generally follows the structure of the regulatory text. Definitions, however, are discussed in the portions of the preamble where they are most relevant.

E. Overall Capital Objectives

The preamble to the proposed rule described the agencies' intention to avoid a material reduction in overall risk-based capital requirements under the advanced approaches. The agencies also identified other objectives, such as ensuring that differences in capital requirements appropriately reflect differences in risk and ensuring that the U.S. implementation of the New Accord will not be a significant source of competitive inequity among internationally active banks or among domestic banks operating under different risk-based capital rules. The final rule modifies and clarifies the approach the agencies will use to achieve these objectives.

The agencies proposed a series of transitional floors to provide a smooth transition to the advanced approaches and to temporarily limit the amount by which a bank's risk-based capital requirements could decline over a period of at least three years. The transitional floors are described in more detail in section III.A.2. of this preamble. The floors generally prohibit a bank's risk-based capital requirement under the advanced approaches from falling below 95 percent, 90 percent, and 85 percent of what it would be under the general risk-based capital

[16] 71 FR 55981 (September 25, 2006).

[17] As applicable, certain agencies are also making conforming changes to existing regulations as necessary to incorporate the new appendices.

[18] 12 CFR part 3, Appendix B (for national banks), 12 CFR part 208, Appendix E (for state member banks), 12 CFR part 225, Appendix E (for bank holding companies), and 12 CFR part 325, Appendix C (for state nonmember banks). OTS intends to codify a market risk rule for savings associations at 12 CFR part 567, Appendix D.

rules during the bank's first, second, and third transitional floor periods, respectively. The proposal stated that banks would be required to receive the approval of their primary Federal supervisor before entering each transitional floor period.

The preamble to the proposal noted that if there was a material reduction in aggregate minimum regulatory capital upon implementation of the advanced approaches, the agencies would propose regulatory changes or adjustments during the transitional floor periods. The preamble further noted that in this context, materiality would depend on a number of factors, including the size, source, and nature of any reduction; the risk profiles of banks authorized to use the advanced approaches; and other considerations relevant to the maintenance of a safe and sound banking system. The agencies also stated that they would view a 10 percent or greater decline in aggregate minimum required risk-based capital (without reference to the effects of the transitional floors), compared to minimum required risk-based capital as determined under the general risk-based capital rules, as a material reduction warranting modification to the supervisory risk functions or other aspects of the framework.

Further, the agencies stated that they were ''identifying a numerical benchmark for evaluating and responding to capital outcomes during the parallel run and transitional floor periods that do not comport with the overall capital objectives.'' The agencies also stated that ''[a]t the end of the transitional floor periods, the agencies would reevaluate the consistency of the framework, as (possibly) revised during the transitional floor periods, with the capital goals outlined in the ANPR and with the maintenance of broad competitive parity between banks adopting the framework and other banks, and would be prepared to make further changes to the framework if warranted.'' The agencies viewed the parallel run and transitional floor periods as ''a trial of the new framework under controlled conditions.'' [19]

The agencies sought comment on the appropriateness of using a 10 percent or greater decline in aggregate minimum required risk-based capital as a numerical benchmark for material reductions when determining whether capital objectives were achieved. Many commenters objected to the proposed transitional floors and the 10 percent benchmark on the grounds that both safeguards deviated materially from the New Accord and the rules implemented by foreign supervisory authorities. In particular, commenters expressed concerns that the aggregate 10 percent limit added a degree of uncertainty to their capital planning process, since the limit was beyond the control of any individual bank. They maintained that it might take only a few banks that decided to reallocate funds toward lower-risk activities during the transition period to impose a penalty on all U.S. banks using the advanced approaches. Other commenters stated that the benchmark lacked transparency and would be operationally difficult to apply.

Commenters also criticized the duration, level, and construct of the transitional floors in the proposed rule. Commenters believed it was inappropriate to extend the transitional floors by an additional year (to three years), and raised concerns that the floors were more binding than those proposed in the New Accord. Commenters strongly urged the agencies to adopt the transition periods and floors in the New Accord to limit any competitive inequities that could arise among internationally active banks.

To better balance commenters' concerns and the agencies' capital adequacy objectives, the agencies have decided not to include the 10 percent benchmark language in this preamble. This will alleviate uncertainty and enable each bank to develop capital plans in accordance with its individual risk profile and business model. The agencies have taken a number of steps to address their capital adequacy objectives. Specifically, the agencies are retaining the existing leverage ratio and PCA requirements and are adopting the three transitional floor periods at the proposed numerical levels.

Under the final rule, the agencies will jointly evaluate the effectiveness of the new capital framework. The agencies will issue a series of annual reports during the transition period that will provide timely and relevant information on the implementation of the advanced approaches. In addition, after the end of the second transition year, the agencies will publish a study (interagency study) that will evaluate the advanced approaches to determine if there are any material deficiencies. For any primary Federal supervisor to authorize any bank to exit the third transitional floor period, the study must determine that there are no such material deficiencies that cannot be addressed by then-existing tools, or, if such deficiencies are found, they must be first remedied by changes to regulation. Notwithstanding the preceding sentence, a primary Federal supervisor that disagrees with the finding of material deficiency may not authorize a bank under its jurisdiction to exit the third transitional floor period unless the supervisor first provides a public report explaining its reasoning.

The agencies intend to establish a transparent and collaborative process for conducting the interagency study, consistent with the recommendations made by the U.S. Government Accountability Office (GAO) in its report on implementation of the New Accord in the United States.[20] In conducting the interagency study the agencies would consider, for example, the following:

- The level of minimum required regulatory capital under U.S. advanced approaches compared to the capital required by other international and domestic regulatory capital standards.
- Peer comparisons of minimum regulatory capital requirements, including but not limited to banks' estimates of risk parameters for portfolios of similar risk.
- The processes banks use to develop and assess risk parameters and advanced systems, and supervisory assessments of their accuracy and reliability.
- Potential cyclical implications.
- Changes in portfolio composition or business mix, including those that might result in changes in capital requirements per dollar of credit exposure.
- Comparison of regulatory capital requirements to market-based measures of capital adequacy to assess relative minimum capital requirements across banks and broad asset categories. Market-based measures might include credit default swap spreads, subordinated debt spreads, external rating agency ratings, and other market measures of risk.
- Examination of the quality and robustness of advanced risk management processes related to assessment of capital adequacy, as in the comprehensive supervisory assessments performed under Pillar 2.
- Additional reviews, including analysis of interest rate and concentration risks that might suggest the need for higher regulatory capital requirements.

F. Competitive Considerations

A fundamental objective of the New Accord is to strengthen the soundness

[19] 71 FR 55839–40 (September 25, 2006).

[20] United States Government Accountability Office, ''Risk-Based Capital: Bank Regulators Need to Improve Transparency and Overcome Impediments to Finalizing the Proposed Basel II Framework'' (GAO–07–253), February 15, 2007.

and stability of the international banking system while maintaining sufficient consistency in capital adequacy regulation to ensure that the New Accord will not be a significant source of competitive inequity among internationally active banks. The agencies support this objective and believe that it is important to promote continual advancement of the risk measurement and management practices of large and internationally active banks.

While all banks should work to enhance their risk management practices, the advanced approaches and the systems required to support their use may not be appropriate for many banks from a cost-benefit point of view. For a number of banks, the agencies believe that the general risk-based capital rules continue to provide a reasonable alternative for regulatory risk-based capital measurement purposes. However, the agencies recognize that a bifurcated risk-based capital framework inevitably raises competitive considerations. The agencies have received comments on risk-based capital proposals issued in the past several years [21] stating that for some portfolios, competitive inequities would be worse under a bifurcated framework. These commenters expressed concern that banks operating under the general risk-based capital rules would be at a competitive disadvantage relative to banks applying the advanced approaches because the IRB approach would likely result in lower risk-based capital requirements for certain types of exposures.

The agencies recognize the potential competitive inequities associated with a bifurcated risk-based capital framework. As part of their effort to develop a risk-based capital framework that minimizes competitive inequities and is not disruptive to the banking sector, the agencies issued the Basel IA proposal in December 2006. The Basel IA proposal included modifications to the general risk-based capital rules to improve risk sensitivity and to reduce potential competitive disparities between domestic banks subject to the advanced approaches and domestic banks not subject to the advanced approaches. Recognizing that some banks might prefer not to incur the additional regulatory burden of moving to modified capital rules, the Basel IA proposal retained the existing general risk-based capital rules and permitted banks to opt in to the modified rules.

The agencies extended the comment period for the advanced approaches proposal to coincide with the comment period on the Basel IA proposal so that commenters would have an opportunity to analyze the effects of the two proposals concurrently.[22]

Seeking to minimize potential competitive inequities and regulatory burden, a number of commenters on both the advanced approaches proposal and the Basel IA proposal urged the agencies to adopt all of the approaches included in the New Accord—including the foundation IRB and standardized approaches for credit risk and the standardized and basic indicator approaches for operational risk. In response to these comments, the agencies have decided to issue a new standardized proposal, which would replace the Basel IA proposal for banks that do not apply the advanced approaches. The standardized proposal would allow banks that are not core banks to implement a standardized approach for credit risk and an approach to operational risk consistent with the New Accord. Like the Basel IA proposal, the standardized proposal will retain the existing general risk-based capital rules for those banks that do not wish to move to the new rules. The agencies expect to issue the standardized proposal in the first quarter of 2008.

A number of commenters expressed concern about competitive inequities among internationally active banks arising from differences in implementation and application of the New Accord by supervisory authorities in different countries. In particular, some commenters asserted that the proposed U.S. implementation would be different from other countries in a number of key areas, such as the definition of default, and that these differences would give rise to substantial implementation cost and burden. Other commenters continued to raise concern about the delayed implementation schedule in the United States.

As discussed in more detail throughout this preamble, the agencies have made a number of changes from the proposal to conform the final rule more closely to the New Accord. These changes should help minimize regulatory burden and mitigate potential competitive inequities across national jurisdictions. In addition, the BCBS has established an Accord Implementation Group, comprised of supervisors from member countries, whose primary objectives are to work through implementation issues, maintain a constructive dialogue about implementation processes, and harmonize approaches as much as possible within the range of national discretion embedded in the New Accord. The BCBS also has established a Capital Interpretation Group to foster consistency in applying the New Accord on an ongoing basis. The agencies intend to participate fully in these groups to ensure that issues relating to international implementation and competitive effects are addressed. While supervisory judgment will play a critical role in the evaluation of risk measurement and management practices at individual banks, supervisors remain committed to and have made significant progress toward developing protocols and information-sharing arrangements that should minimize burdens on banks operating in multiple countries and ensure that supervisory authorities are implementing the New Accord as consistently as possible.

With regard to implementation timing concerns, the agencies believe that the transitional arrangements described in preamble section III.A.2. below provide a prudent and reasonable framework for moving to the advanced approaches. Where international implementation differences affect an individual bank, the agencies are working with the bank and appropriate national supervisory authorities to ensure that implementation proceeds as efficiently as possible.

II. Scope

The agencies have identified three groups of banks: (i) Large or internationally active banks that are required to adopt the advanced approaches (core banks); (ii) banks that voluntarily decide to adopt the advanced approaches (opt-in banks); and (iii) banks that do not adopt the advanced approaches (general banks). Each core and opt-in bank is required to meet certain qualification requirements to the satisfaction of its primary Federal supervisor, which in turn will consult with other relevant supervisors, before the bank may use the advanced approaches for risk-based capital purposes.

Pillar 1 of the New Accord requires all banks subject to the New Accord to calculate capital requirements for exposure to credit risk and operational risk. The New Accord sets forth three approaches to calculating the credit risk capital requirement and three approaches to calculating the operational risk capital requirement. Outside the United States, countries that are replacing Basel I with the New

[21] *See* 68 FR 45900 (Aug. 4, 2003), 70 FR 61068 (Oct. 20, 2005), 71 FR 55830 (Sept. 25, 2006), and 71 FR 77446 (Dec. 26, 2006).

[22] *See* 71 FR 77518 (Dec. 26, 2006).

Accord generally have required all banks to comply with the New Accord, but have provided banks the option of choosing among the New Accord's various approaches for calculating credit risk and operational risk capital requirements.

For banks in the United States, the agencies have taken a different approach. This final rule focuses on the largest and most internationally active banks and requires those banks to comply with the most advanced approaches for calculating credit and operational risk capital requirements (the IRB and the AMA). The final rule allows other U.S. banks to ''opt in'' to the advanced approaches. The agencies have decided at this time to require large, internationally active U.S. banks to use the most advanced approaches of the New Accord. The less advanced approaches of the New Accord lack the degree of risk sensitivity of the advanced approaches. The agencies have the view that risk-sensitive regulatory capital requirements are integral to ensuring that large, sophisticated banks and the financial system have an adequate capital cushion to absorb financial losses. Also, the advanced approaches provide more substantial incentives for banks to improve their risk measurement and management practices than do the other approaches. The agencies do not believe that competitive equity concerns are sufficiently compelling to warrant permitting large, internationally active U.S. banks to adopt the standardized approaches in the New Accord.

A. Core and Opt-In Banks

Under section 1(b) of the proposed rule, a DI would be a core bank if it met either of two independent threshold criteria: (i) Consolidated total assets of $250 billion or more, as reported on the most recent year-end regulatory reports; or (ii) consolidated total on-balance sheet foreign exposure of $10 billion or more at the most recent year end. To determine total on-balance sheet foreign exposure, a bank would sum its adjusted cross-border claims, local country claims, and cross-border revaluation gains calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) Country Exposure Report (FFIEC 009). Adjusted cross-border claims would equal total cross-border claims less claims with the head office or guarantor located in another country, plus redistributed guaranteed amounts to the country of head office or guarantor. The agencies also proposed that a DI would be a core bank if it is a subsidiary of another DI or BHC that uses the advanced approaches.

Under the proposed rule, a U.S.-chartered BHC [23] would be a core bank if the BHC had: (i) Consolidated total assets (excluding assets held by an insurance underwriting subsidiary) of $250 billion or more, as reported on the most recent year-end regulatory reports; (ii) consolidated total on-balance sheet foreign exposure of $10 billion or more at the most recent year-end; or (iii) a subsidiary DI that is a core bank or opt-in bank.

The agencies included a question in the proposal seeking commenters' views on using consolidated total assets (excluding assets held by an insurance underwriting subsidiary) as one criterion to determine whether a BHC would be viewed as a core BHC. Some of the commenters addressing this issue supported the proposed approach, noting it was a reasonable proxy for mandatory applicability of a framework designed to measure capital requirements for consolidated risk exposures of a BHC. Other commenters, particularly foreign banking organizations and their trade associations, contended that the BHC asset size threshold criterion instead should be $250 billion of assets in U.S. subsidiary DIs. These commenters further suggested that if the Board kept the proposed $250 billion consolidated total BHC assets criterion, it should limit the scope of this criterion to BHCs with a majority of their assets in U.S. DI subsidiaries. The Board has decided to retain the proposed approach using consolidated total assets (excluding assets held by an insurance underwriting subsidiary) as one threshold criterion for BHCs in this final rule. This approach recognizes that BHCs can hold similar assets within and outside of DIs and reduces potential incentives to structure BHC assets and activities to arbitrage capital regulations. The final rule continues to exclude assets held in an insurance underwriting subsidiary of a BHC from the asset threshold because the advanced approaches were not designed to address insurance underwriting exposures.

The final rule also retains the threshold criterion for core bank/BHC status of consolidated total on-balance sheet foreign exposure of $10 billion or more at the most recent year-end. The calculation of this exposure amount is unchanged in the final rule.

[23] OTS does not currently impose any explicit capital requirements on savings and loan holding companies and is not implementing the advanced approaches for these holding companies.

In the preamble to the proposed rule, the agencies also included a question on potential regulatory burden associated with requiring a bank that applies the advanced approaches to implement the advanced approaches at each subsidiary DI—even if those subsidiary DIs do not individually meet a threshold criterion. A number of commenters addressed this issue. While they expressed a range of views, most commenters maintained that small DI subsidiaries of core banks should not be required to implement the advanced approaches. Rather, commenters asserted that these DIs should be permitted to use simpler methodologies, such as the New Accord's standardized approach. Commenters asserted there would be regulatory burden and costs associated with the proposed push-down approach, particularly if a stand-alone AMA is required at each DI.

The agencies have considered comments on this issue and have decided to retain the proposed approach. Thus, under the final rule, each DI subsidiary of a core or opt-in bank is itself a core bank required to apply the advanced approaches. The agencies believe that this approach serves as an important safeguard against regulatory capital arbitrage among affiliated banks that would otherwise be subject to substantially different capital rules. Moreover, to calculate its consolidated IRB risk-based capital requirements, a bank must estimate risk parameters for all credit exposures within the bank except for exposures in portfolios that, in the aggregate, are immaterial to the bank. Because the consolidated bank must already estimate risk parameters for all material portfolios of wholesale and retail exposures in all of its consolidated subsidiaries, the agencies believe that there is limited additional regulatory burden associated with application of the IRB approach at each subsidiary DI. Likewise, to calculate its consolidated AMA risk-based capital requirements, a bank must estimate its operational risk exposure using a unit of measure (defined below) that does not combine business activities or operational loss events with demonstrably different risk profiles within the same loss distribution. Each subsidiary DI could have a demonstrably different risk profile that would require the generation of separate loss distributions.

However, the agencies recognize there may be situations where application of the advanced approaches at an individual DI subsidiary of an advanced approaches bank may not be appropriate. Therefore, the final rule includes the proposed provision that permits a core or opt-in bank's primary Federal supervisor to determine in writing that application of the advanced approaches is not appropriate for the DI in light of the bank's asset size, level of complexity, risk profile, or scope of operations.

B. U.S. Subsidiaries of Foreign Banks

Under the proposed rule, any U.S.-chartered DI that is a subsidiary of a foreign banking organization would be subject to the U.S. regulatory capital requirements for domestically-owned U.S. DIs. Thus, if the U.S. DI subsidiary of a foreign banking organization met any of the threshold criteria, it would be a core bank and would be subject to the advanced approaches. If it did not meet any of the criteria, the U.S. DI could remain a general bank or could opt in to the advanced approaches, subject to the same qualification process and requirements as a domestically-owned U.S. DI.

The proposed rule also provided that a top-tier U.S. BHC, and its subsidiary DIs, that was owned by a foreign banking organization would be subject to the same threshold levels for core bank determination as a top-tier BHC that is not owned by a foreign banking organization.[24] The preamble noted that a U.S. BHC that met the conditions in Federal Reserve SR letter 01–01 [25] and that was a core bank would not be required to meet the minimum capital ratios in the Board's capital adequacy guidelines, although it would be required to adopt the advanced approaches, compute and report its capital ratios in accordance with the advanced approaches, and make the required public and regulatory disclosures. A DI subsidiary of such a U.S. BHC also would be a core bank and would be required to adopt the advanced approaches and meet the minimum capital ratio requirements.

Under the final rule, consistent with SR 01–01, a foreign-owned U.S. BHC that is a core bank and that also is subject to SR 01–01 will, as a technical matter, be required to adopt the advanced approaches, and compute and report its capital ratios and make other required disclosures. It will not, however, be required to maintain the minimum capital ratios at the U.S. consolidated holding company level unless otherwise required to do so by the Board. In response to the potential burden issues identified by commenters and outlined above, the Board notes that the final rule allows the Board to exempt any BHC from mandatory application of the advanced approaches. The Board will make such a determination in light of the BHC's asset size (including subsidiary DI asset size relative to total BHC asset size), level of complexity, risk profile, or scope of operation. Similarly, the final rule allows a primary Federal supervisor to exempt any DI under its jurisdiction from mandatory application of the advanced approaches. A primary Federal supervisor will consider the same factors in making its determination.

C. Reservation of Authority

The proposed rule restated the authority of a bank's primary Federal supervisor to require a bank to hold an overall amount of capital greater than would otherwise be required under the rule if the agency determined that the bank's risk-based capital requirements were not commensurate with the bank's credit, market, operational, or other risks. In addition, the preamble of the proposed rule noted the agencies' expectation that there may be instances when the rule would generate a risk-weighted asset amount for specific exposures that is not commensurate with the risks posed by such exposures. Accordingly, under the proposed rule, the bank's primary Federal supervisor would retain the authority to require the bank to use a different risk-weighted asset amount for the exposures or to use different risk parameters (for wholesale or retail exposures) or model assumptions (for modeled equity or securitization exposures) than those required when calculating the risk-weighted asset amount for those exposures. Similarly, the proposed rule provided explicit authority for a bank's primary Federal supervisor to require the bank to assign a different risk-weighted asset amount for operational risk, to change elements of its operational risk analytical framework (including distributional and dependence assumptions), or to make other changes to the bank's operational risk management processes, data and assessment systems, or quantification systems if the supervisor found that the risk-weighted asset amount for operational risk produced by the bank under the rule was not commensurate with the operational risks of the bank. Any agency that exercised a reservation of authority was expected to notify each of the other agencies of its determination.

Several commenters raised concerns with the scope of the reservation of authority, particularly as it would apply to operational risk. These commenters asserted, for example, that the agencies should address identified operational risk-related capital deficiencies through Pillar 2, rather than through requiring a bank to adjust input variables or techniques used for the calculation of Pillar 1 operational risk capital requirements. Commenters were concerned that excessive agency Pillar 1 intervention on operational risk might inhibit innovation.

While the agencies agree that innovation is important and that general supervisory oversight likely would be sufficient in many cases to address risk-related capital deficiencies, the agencies also believe that it is important to retain as much supervisory flexibility as possible as they move forward with implementation of the final rule. In general, the proposed reservation of authority represented a reaffirmation of the current authority of a bank's primary Federal supervisor to require the bank to hold an overall amount of regulatory capital or maintain capital ratios greater than would be required under the general risk-based capital rules. There may be cases where requiring a bank to assign a different risk-weighted asset amount for operational risk may not sufficiently address problems associated with underlying quantification practices and may cause an ongoing misalignment between the operational risk of a bank and the risk-weighted asset amount for operational risk generated by the bank's operational risk quantification system. In view of this and the inherent flexibility provided for operational risk measurement under the AMA, the agencies believe it is appropriate to articulate the specific measures a primary Federal supervisor may take if it determines that a bank's risk-weighted asset amount for operational risk is not commensurate with the operational risks of the bank. Therefore, the final rule retains the reservation of authority as proposed. The agencies emphasize that any decision to exercise this authority would be made judiciously and that a bank bears the primary responsibility for maintaining the integrity, reliability, and accuracy of its risk management and measurement systems.

D. Principle of Conservatism

Several commenters asked whether it would be permissible not to apply an aspect of the rule for cost or regulatory burden reasons, if the result would be

[24] The Board notes that it generally does not apply regulatory capital requirements to subsidiary BHCs of top-tier U.S. BHCs, regardless of whether the top-tier U.S. BHC is itself a subsidiary of a foreign banking organization.

[25] SR 01–01, ''Application of the Board's Capital Adequacy Guidelines to Bank Holding Companies Owned by Foreign Banking Organizations,'' January 5, 2001.

a more conservative capital requirement. For example, for purposes of the RBA for securitization exposures, some commenters asked whether a bank could choose not to track the seniority of a securitization exposure and, instead, assume that the exposure is not a senior securitization exposure. Similarly, some commenters asked if risk-based capital requirements for certain exposures could be calculated ignoring the benefits of risk mitigants such as collateral or guarantees.

The agencies believe that in some cases it may be reasonable to allow a bank to implement a simplified capital calculation if the result is more conservative than would result from a comprehensive application of the rule. Under a new section 1(d) of the final rule, a bank may choose not to apply a provision of the rule to one or more exposures provided that (i) the bank can demonstrate on an ongoing basis to the satisfaction of its primary Federal supervisor that not applying the provision would, in all circumstances, unambiguously generate a risk-based capital requirement for each exposure greater than that which would otherwise be required under this final rule, (ii) the bank appropriately manages the risk of those exposures, (iii) the bank provides written notification to its primary Federal supervisor prior to applying this principle to each exposure, and (iv) the exposures to which the bank applies this principle are not, in the aggregate, material to the bank.

The agencies emphasize that a conservative capital requirement for a group of exposures does not reduce the need for appropriate risk management of those exposures. Moreover, the principle of conservatism applies to the determination of capital requirements for specific exposures; it does not apply to the qualification or disclosure requirements in sections 22 and 71 of the final rule. Sections V.A.1., V.A.3., and V.E.2. of this preamble contain examples of the appropriate use of this principle of conservatism.

III. Qualification

A. The Qualification Process

1. In General

Supervisory qualification to use the advanced approaches is an iterative and ongoing process that begins when a bank's board of directors adopts an implementation plan and continues as the bank operates under the advanced approaches. Under the final rule, as under the proposal, a bank must develop and adopt a written implementation plan, establish and maintain a comprehensive and sound planning and governance process to oversee the implementation efforts described in the plan, demonstrate to its primary Federal supervisor that it meets the qualification requirements in section 22 of the final rule, and complete a satisfactory ''parallel run'' (discussed below) before it may use the advanced approaches for risk-based capital purposes. A bank's primary Federal supervisor is responsible, after consultation with other relevant supervisors, for evaluating the bank's initial and ongoing compliance with the qualification requirements for the advanced approaches.

Under the final rule, as under the proposed rule, a bank preparing to implement the advanced approaches must adopt a written implementation plan, approved by its board of directors, describing in detail how the bank complies, or intends to comply, with the qualification requirements. A core bank must adopt a plan no later than six months after it meets a threshold criterion in section 1(b)(1) of the final rule. If a bank meets a threshold criterion on the effective date of the final rule, the bank would have to adopt a plan within six months of the effective date. Banks that do not meet a threshold criterion, but are nearing any criterion by internal growth or merger, are expected to engage in ongoing dialogue with their primary Federal supervisor regarding implementation strategies to ensure their readiness to adopt the advanced approaches when a threshold criterion is reached. An opt-in bank may adopt an implementation plan at any time. Under the final rule, each core and opt-in bank must submit its implementation plan, together with a copy of the minutes of the board of directors' approval of the plan, to its primary Federal supervisor at least 60 days before the bank proposes to begin its parallel run, unless the bank's primary Federal supervisor waives this prior notice provision. The submission to the primary Federal supervisor should indicate the date that the bank proposes to begin its parallel run.

In developing an implementation plan, a bank must assess its current state of readiness relative to the qualification requirements in this final rule. This assessment must include a gap analysis that identifies where additional work is needed and a remediation or action plan that clearly sets forth how the bank intends to fill the gaps it has identified. The implementation plan must comprehensively address the qualification requirements for the bank and each of its consolidated subsidiaries (U.S. and foreign-based) with respect to all portfolios and exposures of the bank and each of its consolidated subsidiaries. The implementation plan must justify and support any proposed temporary or permanent exclusion of a business line, portfolio, or exposure from the advanced approaches. The business lines, portfolios, and exposures that the bank proposes to exclude from the advanced approaches must be, in the aggregate, immaterial to the bank. The implementation plan must include objective, measurable milestones (including delivery dates and a date when the bank's implementation of the advanced approaches will be fully operational). For core banks, the implementation plan must include an explicit first transitional floor period start date that is no later than 36 months after the later of the effective date of the rule or the date the bank meets at least one of the threshold criteria.[26] Further, the implementation plan must describe the resources that the bank has budgeted and that are available to implement the plan.

The proposed rule allowed a bank to exclude a portfolio of exposures from the advanced approaches if the bank could demonstrate to the satisfaction of its primary Federal supervisor that the portfolio, when combined with all other portfolios of exposures that the bank sought to exclude from the advanced approaches, was not material to the bank. Some commenters asserted that a bank should be permitted to exclude from the advanced approaches any business line, portfolio, or exposure that is immaterial on a stand-alone basis (regardless of whether the excluded exposures in the aggregate are material to the bank). The agencies believe that it is not appropriate for a bank to permanently exclude a material portion of its exposures from the enhanced risk sensitivity and risk measurement and management requirements of the advanced approaches. Accordingly, the final rule retains the requirement that the business lines, portfolios, and exposures that the bank proposes to exclude from the advanced approaches must be, in the aggregate, immaterial to the bank.

During implementation of the advanced approaches, a bank should work closely with its primary Federal supervisor to ensure that its risk measurement and management systems are functional and reliable and are able to generate risk parameter estimates that can be used to calculate the risk-based capital ratios correctly under the advanced approaches. The

[26] The bank's primary Federal supervisor may extend the bank's first transitional floor period start date.

implementation plan, including the gap analysis and action plan, will provide a basis for ongoing supervisory dialogue and review during the qualification process. The primary Federal supervisor will assess a bank's progress relative to its implementation plan. To the extent that adjustments to target dates are needed, these adjustments should be made subject to the ongoing supervisory discussion between the bank and its primary Federal supervisor.

2. Parallel Run and Transitional Floor Periods

Under the proposed and final rules, once a bank has adopted its implementation plan, it must complete a satisfactory parallel run before it may use the advanced approaches to calculate its risk-based capital requirements. The proposed rule defined a satisfactory parallel run as a period of at least four consecutive calendar quarters during which a bank complied with all of the qualification requirements to the satisfaction of its primary Federal supervisor.

Many commenters objected to the proposed requirement that the bank had to meet all of the qualification requirements before it could begin the parallel run period. The agencies recognize that certain qualification requirements, such as outcomes analysis, become more meaningful as a bank gains experience employing the advanced approaches. The agencies therefore are modifying the definition of a satisfactory parallel run in the final rule. Under the final rule, a satisfactory parallel run is a period of at least four consecutive calendar quarters during which the bank complies with the qualification requirements to the satisfaction of its primary Federal supervisor. This revised definition, which does not contain the word ''all,'' recognizes that the qualification of banks for the advanced approaches during the parallel run period will be an iterative and ongoing process. The agencies intend to assess individual advanced approaches methodologies through numerous discussions, reviews, data collection and analysis, and examination activities. The agencies also emphasize the critical importance of ongoing validation of advanced approaches methodologies both before and after initial qualification decisions. A bank's primary Federal supervisor will review a bank's validation process and documentation for the advanced approaches on an ongoing basis through the supervisory process. The bank should include in its implementation plan the steps it will take to enhance compliance with the qualification requirements during the parallel run period.

Commenters also requested the flexibility, permitted under the New Accord, to apply the advanced approaches to some portfolios and other approaches (such as the standardized approach in the New Accord) to other portfolios during the transitional floor periods. The agencies believe, however, that banks applying the advanced approaches should move expeditiously to extend the robust risk measurement and management practices required by the advanced approaches to all material exposures. To preserve these positive risk measurement and management incentives for banks and to prevent ''cherry picking'' of portfolios, the final rule retains the provision in the proposed rule that states that a bank may enter the first transitional floor period only if it fully complies with the qualification requirements in section 22 of the rule. As described above, the final rule allows a simplified approach for portfolios that are, in the aggregate, immaterial to the bank.

Another concern identified by commenters regarding the parallel run was the asymmetric treatment of mergers and acquisitions consummated before and after the date a bank qualified to use the advanced approaches. Under the proposed rule, a bank qualified to use the advanced approaches that merged with or acquired a company would have up to 24 months following the calendar quarter during which the merger or acquisition was consummated to integrate the merged or acquired company into the bank's advanced approaches capital calculations. In contrast, the proposed rule could be read to provide that a bank that merged with or acquired a company before the bank qualified to use the advanced approaches had to fully implement the advanced approaches for the merged or acquired company before the bank could qualify to use the advanced approaches. The agencies agree that this asymmetric treatment is not appropriate. Accordingly, the final rule applies the merger and acquisition transition provisions both before and after a bank qualifies to use the advanced approaches. The merger and acquisition transition provisions are described in section III.D. of this preamble.

During the parallel run period, a bank continues to be subject to the general risk-based capital rules but simultaneously calculates its risk-based capital ratios under the advanced approaches. During this period, a bank will report its risk-based capital ratios under the general risk-based capital rules and the advanced approaches to its primary Federal supervisor through the supervisory process on a quarterly basis. The agencies will share this information with each other.

As described above, a bank must provide its board-approved implementation plan to its primary Federal supervisor at least 60 days before the bank proposes to begin its parallel run period. A bank also must receive approval from its primary Federal supervisor before beginning its first transitional floor period. In evaluating whether to grant approval to a bank to begin using the advanced approaches for risk-based capital purposes, the bank's primary Federal supervisor must determine that the bank fully complies with all the qualification requirements, the bank has conducted a satisfactory parallel run, and the bank has an adequate process to ensure ongoing compliance with the qualification requirements.

To provide for a smooth transition to the advanced approaches, the proposed rule imposed temporary limits on the amount by which a bank's risk-based capital requirements could decline over a period of at least three years (that is, at least four consecutive calendar quarters in each of the three transitional floor periods). Based on its assessment of the bank's ongoing compliance with the qualification requirements, a bank's primary Federal supervisor would determine when the bank is ready to move from one transitional floor period to the next period and, after the full transition has been completed, to exit the last transitional floor period and move to stand-alone use of the advanced approaches. Table A sets forth the proposed transitional floor periods for banks moving to the advanced approaches:

TABLE A.—TRANSITIONAL FLOORS

Transitional floor period	Transitional floor percentage
First floor period	95
Second floor period	90
Third floor period	85

During the proposed transitional floor periods, a bank would calculate its risk-weighted assets under the general risk-based capital rules. Next, the bank would multiply this risk-weighted assets amount by the appropriate floor percentage in the table above. This product would be the bank's ''floor-adjusted'' risk-weighted assets. Third, the bank would calculate its tier 1 and total risk-based capital ratios using the definitions of tier 1 and tier 2 capital (and associated deductions and adjustments) in the general risk-based capital rules for the numerator values and floor-adjusted risk-weighted assets for the denominator values. These ratios would be referred to as the ''floor-adjusted risk-based capital ratios.''

The bank also would calculate its tier 1 and total risk-based capital ratios using the advanced approaches definitions and rules. These ratios would be referred to as the ''advanced approaches risk-based capital ratios.'' In addition, the bank would calculate a tier 1 leverage ratio using tier 1 capital as defined in the proposed rule for the numerator of the ratio.

During a bank's transitional floor periods, the bank would report all five regulatory capital ratios described above—two floor-adjusted risk-based capital ratios, two advanced approaches risk-based capital ratios, and one leverage ratio. To determine its applicable capital category for PCA purposes and for all other regulatory and supervisory purposes, a bank's risk-based capital ratios during the transitional floor periods would be set equal to the lower of the respective floor-adjusted risk-based capital ratio and the advanced approaches risk-based capital ratio.

During the proposed transitional floor periods, a bank's tier 1 capital and tier 2 capital for all non-risk-based-capital supervisory and regulatory purposes (for example, lending limits and Regulation W quantitative limits) would be the bank's tier 1 capital and tier 2 capital as calculated under the advanced approaches.

Thus, for example, to be well capitalized under PCA, a bank would have to have a floor-adjusted tier 1 risk-based capital ratio and an advanced approaches tier 1 risk-based capital ratio of 6 percent or greater, a floor-adjusted total risk-based capital ratio and an advanced approaches total risk-based capital ratio of 10 percent or greater, and a tier 1 leverage ratio of 5 percent or greater (with tier 1 capital calculated under the advanced approaches). Although the PCA rules do not apply to BHCs, a BHC would be required to report all five of these regulatory capital ratios and would have to meet applicable supervisory and regulatory requirements using the lower of the respective floor-adjusted risk-based capital ratio and the advanced approaches risk-based capital ratio.[27]

Under the proposed rule, after a bank completed its transitional floor periods and its primary Federal supervisor determined the bank could begin using the advanced approaches with no further transitional floor, the bank would use its tier 1 and total risk-based capital ratios as calculated under the advanced approaches and its tier 1 leverage ratio calculated using the advanced approaches definition of tier 1 capital for PCA and all other supervisory and regulatory purposes.

Although one commenter supported the proposed transitional provisions, many commenters objected to these transitional provisions. Commenters urged the agencies to conform the transitional provisions to those in the New Accord. Specifically, they requested that the three transitional floor periods be reduced to two periods and that the transitional floor percentages be reduced from 95 percent, 90 percent, and 85 percent to 90 percent and 80 percent. Commenters also requested that the transitional floor calculation methodology be conformed to the generally less restrictive methodology of the New Accord. Moreover, they expressed concern about the requirement that a bank obtain supervisory approval to move from one transitional floor period to the next, which could potentially extend each floor period beyond four calendar quarters.

The agencies believe that the prudential transitional safeguards are necessary to address concerns identified in the analysis of the results of QIS–4.[28] Specifically, the transitional safeguards will ensure that implementation of the advanced approaches will not result in a precipitous drop in risk-based capital requirements, and will provide a smooth transition process as banks refine their advanced systems. Banks' computation of risk-based capital requirements under both the general risk-based capital rules and the advanced approaches during the parallel run and transitional floor periods will help the agencies assess the impact of the advanced approaches on overall capital requirements, including whether the change in capital requirements relative to the general risk-based capital rules is consistent with the agencies' overall capital objectives. Therefore, the agencies are adopting in this final rule the proposed level, duration, and calculation methodology of the transitional floors, with the revised process for determining when banks may exit the third transitional floor period discussed in section I.E., above.

Under the final rule, as under the proposed rule, banks that meet the threshold criteria in section 1(b)(1) (core banks) as of the effective date of this final rule, and banks that opt in pursuant to section 1(b)(2) at the earliest possible date, must use the general risk-based capital rules both during the parallel run and as a basis for the transitional floor calculations. Should the agencies finalize a standardized risk-based capital rule, the agencies expect that a bank that opts in after the earliest possible date or becomes a core bank after the effective date of the final rule would use the risk-based capital regime (the general risk-based capital rules or the standardized risk-based capital rules) used by the bank immediately before the bank begins its parallel run both during the parallel run and as a basis for the transitional floor calculations. Under the final rule, 2008 is the first possible year for a bank to begin its parallel run and 2009 is the first possible year for a bank to begin its first of three transitional floor periods.

B. Qualification Requirements

Because the advanced approaches use banks' estimates of certain key risk parameters to determine risk-based capital requirements, they introduce greater complexity to the regulatory capital framework and require banks to possess a high level of sophistication in risk measurement and risk management systems. As a result, the final rule requires each core or opt-in bank to meet the qualification requirements described in section 22 of the final rule to the satisfaction of its primary Federal supervisor for a period of at least four consecutive calendar quarters before using the advanced approaches to calculate its minimum risk-based capital requirements (subject to the transitional floor provisions for at least an additional three years). The qualification requirements are written broadly to accommodate the many ways a bank may design and implement robust internal credit and operational risk measurement and management systems, and to permit industry practice to evolve.

Many of the qualification requirements relate to a bank's advanced IRB systems. A bank's advanced IRB systems must incorporate

[27] The Board notes that, under the applicable leverage ratio rule, a BHC that is rated composite ''1'' or that has adopted the market risk rule has a minimum leverage ratio requirement of 3 percent. For other BHCs, the minimum leverge ratio requirement is 4 percent.

[28] Preliminary analysis of the QIS–4 submissions evidenced material reductions in the aggregate minimum required capital for the QIS–4 participant population and significant dispersion of results across institutions and portfolio types. See Interagency Press Release, Banking ''Agencies To Perform Additional Analysis Before Issuing Notice of Proposed Rulemaking Related To Basel II,'' April 29, 2005.

five interdependent components in a framework for evaluating credit risk and measuring regulatory capital:

(i) A risk rating and segmentation system that assigns ratings to individual wholesale obligors and exposures and assigns individual retail exposures to segments;

(ii) A quantification process that translates the risk characteristics of wholesale obligors and exposures and segments of retail exposures into numerical risk parameters that are used as inputs to the IRB risk-based capital formulas;

(iii) An ongoing process that validates the accuracy of the rating assignments, segmentations, and risk parameters;

(iv) A data management and maintenance system that supports the advanced IRB systems; and

(v) Oversight and control mechanisms that ensure the advanced IRB systems are functioning effectively and producing accurate results.

1. Process and Systems Requirements

One of the objectives of the advanced approaches framework is to provide appropriate incentives for banks to develop and use better techniques for measuring and managing their risks and to ensure that capital is adequate to support those risks. Section 3 of the final rule requires a bank to hold capital commensurate with the level and nature of all risks to which the bank is exposed. Section 22 of the final rule specifically requires a bank to have a rigorous process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining appropriate capital levels (known as the internal capital adequacy assessment process or ICAAP). Another objective of the advanced approaches framework is to ensure comprehensive supervisory review of capital adequacy.

On February 28, 2007, the agencies issued proposed guidance setting forth supervisory expectations for a bank's ICAAP and addressing the process for a comprehensive supervisory assessment of capital adequacy.[29] As set forth in that guidance, and consistent with existing supervisory practice, a bank's primary Federal supervisor will evaluate how well the bank is assessing its capital needs relative to its risks. The supervisor will assess the bank's overall capital adequacy and will take into account a bank's ICAAP, its compliance with the minimum capital requirements set forth in this rule, and all other relevant information. The primary Federal supervisor will require a bank to increase its capital levels or ratios if the supervisor determines that current levels or ratios are deficient or some element of the bank's business practices suggests the need for higher capital levels or ratios. In addition, the primary Federal supervisor may, under its enforcement authority, require a bank to modify or enhance risk management and internal control authority, or reduce risk exposures, or take any other action as deemed necessary to address identified supervisory concerns.

As outlined in the proposed guidance, the agencies expect banks to implement and continually update the fundamental elements of a sound ICAAP—identifying and measuring material risks, setting capital adequacy goals that relate to risk, and ensuring the integrity of internal capital adequacy assessments. A bank is expected to ensure adequate capital is held against all material risks.

In developing its ICAAP, a bank should be particularly mindful of the limitations of regulatory risk-based capital requirements as a measure of its full risk profile—including risks not covered or not adequately quantified in the risk-based capital requirements—as well as specific assumptions embedded in risk-based regulatory capital requirements (such as diversification in credit portfolios). A bank should also be mindful of the capital adequacy effects of concentrations that may arise within each risk type or across risk types. In general, a bank's ICAAP should reflect an appropriate level of conservatism to account for uncertainty in risk identification, risk mitigation or control, quantitative processes, and any use of modeling. In most cases, this conservatism will result in higher levels of capital or higher capital ratios being regarded as adequate.

As noted above, each core and opt-in bank must apply the advanced approaches for risk-based capital purposes at the consolidated top-tier U.S. legal entity level (either the top-tier U.S. BHC or top-tier DI that is a core or opt-in bank) and at each DI that is a subsidiary of such a top-tier legal entity (unless a primary Federal supervisor provides an exemption under section 1(b)(3) of the final rule). Each bank that applies the advanced approaches must have an appropriate infrastructure with risk measurement and management processes that meet the final rule's qualification requirements and that are appropriate given the bank's size and level of complexity. Regardless of whether the systems and models that generate the risk parameters necessary for calculating a bank's risk-based capital requirements are located at an affiliate of the bank, each legal entity that applies the advanced approaches must ensure that the risk parameters (PD, LGD, EAD, and, for wholesale exposures, M) and reference data used to determine its risk-based capital requirements are representative of its own credit and operational risk exposures.

The final rule also requires that the systems and processes that an advanced approaches bank uses for risk-based capital purposes must be consistent with the bank's internal risk management processes and management information reporting systems. This means, for example, that data from the latter processes and systems can be used to verify the reasonableness of the inputs the bank uses for calculating risk-based capital ratios.

2. Risk Rating and Segmentation Systems for Wholesale and Retail Exposures

To implement the IRB approach, a bank must have internal risk rating and segmentation systems that accurately and reliably differentiate between degrees of credit risk for wholesale and retail exposures. As described below, wholesale exposures include most credit exposures to companies, sovereigns, and other governmental entities, as well as some exposures to individuals. Retail exposures include most credit exposures to individuals and small credit exposures to businesses that are managed as part of a segment of exposures with homogeneous risk characteristics. Together, wholesale and retail exposures cover most credit exposures of banks.

To differentiate among degrees of credit risk, a bank must be able to make meaningful and consistent distinctions among credit exposures along two dimensions—default risk and loss severity in the event of a default. In addition, a bank must be able to assign wholesale obligors to rating grades that approximately reflect likelihood of default and must be able to assign wholesale exposures to loss severity rating grades (or LGD estimates) that approximately reflect the loss severity expected in the event of default during economic downturn conditions. As discussed below, the final rule requires banks to treat wholesale exposures differently from retail exposures when differentiating among degrees of credit risk; specifically, risk parameters for retail exposures are assigned at the segment level.

Wholesale Exposures

Under the proposed rule, a bank would be required to have an internal risk rating system that indicates the likelihood of default of each individual

[29] 72 FR 9189.

obligor and would either use an internal risk rating system that indicates the economic loss rate upon default of each individual exposure or directly assign an LGD estimate to each individual exposure. A bank would assign an internal risk rating to each wholesale obligor that reflected the obligor's likelihood of default.

Several commenters objected to the proposed requirement to assign an internal risk rating to each wholesale obligor that reflected the obligor's likelihood of default. Commenters asserted that this requirement was burdensome and unnecessary where a bank underwrote an exposure based solely on the financial strength of a guarantor and used the PD substitution approach (discussed below) to recognize the risk mitigating effects of an eligible guarantee on the exposure. In such cases, commenters maintained that banks should be allowed to assign a PD only to the guarantor and not the underlying obligor.

While the agencies believe that maintaining internal risk ratings of both a protection provider and underlying obligor provides helpful information for risk management purposes and facilitates a greater understanding of so-called double default effects, the agencies appreciate the commenters' concerns about burden in this context. Accordingly, the final rule does not require a bank to assign an internal risk rating to an underlying obligor to whom the bank extends credit based solely on the financial strength of a guarantor, provided that all of the bank's exposures to that obligor are fully covered by eligible guarantees and the bank applies the PD substitution approach to all of those exposures. A bank in this situation is only required to assign an internal risk rating to the guarantor. However, a bank must immediately assign an internal risk rating to the obligor if a guarantee can no longer be recognized under this final rule.

In determining an obligor rating, a bank should consider key obligor attributes, including both quantitative and qualitative factors that could affect the obligor's default risk. From a quantitative perspective, this could include an assessment of the obligor's historic and projected financial performance, trends in key financial performance ratios, financial contingencies, industry risk, and the obligor's position in the industry. On the qualitative side, this could include an assessment of the quality of the obligor's financial reporting, non-financial contingencies (for example, labor problems and environmental issues), and the quality of the obligor's management based on an evaluation of management's ability to make realistic projections, management's track record in meeting projections, and management's ability to effectively adapt to changes in the economy and the competitive environment.

Under the proposed rule, a bank would assign each legal entity wholesale obligor to a single rating grade. Accordingly, if a single wholesale exposure of the bank to an obligor triggered the proposed rule's definition of default, all of the bank's wholesale exposures to that obligor would be in default for risk-based capital purposes. In addition, under the proposed rule, a bank would not be allowed to consider the value of collateral pledged to support a particular wholesale exposure (or any other exposure-specific characteristics) when assigning a rating to the obligor of the exposure. A bank would, however, consider all available financial information about the obligor—including, where applicable, the total operating income or cash flows from all of the obligor's projects or businesses—when assigning an obligor rating.

While a few commenters expressly supported the proposal's requirement for banks to assign each legal entity wholesale obligor to a single rating grade, a substantial number of commenters expressed reservations about this requirement. These commenters observed that in certain circumstances an exposure's transaction-specific characteristics affect its likelihood of default. Commenters asserted that the agencies should provide greater flexibility and allow banks to depart from the one-rating-per-obligor requirement based on the economic substance of an exposure. In particular, commenters maintained that income-producing real estate lending should be exempt from the one-rating-per-obligor requirement. The commenters noted that the probability that an obligor will default on any one such facility depends primarily on the cash flows from the individual property securing the facility, not the overall condition of the obligor. Similarly, several commenters asserted that exposures involving transfer risk and non-recourse exposures should be exempted from the one-rating-per-obligor requirement.

In general, the agencies believe that a two-dimensional rating system that strictly separates borrower and exposure-level characteristics is a critical underpinning of the IRB approach. However, the agencies agree that exposures to the same borrower denominated in different currencies may have different default probabilities. For example, a sovereign government may impose prohibitive exchange restrictions that make it impossible for a borrower to transfer payments in one particular currency.

In addition, the agencies agree that certain income-producing real estate exposures for which the bank, in economic substance, does not have recourse to the borrower beyond the real estate serving as collateral for the exposure, have default probabilities distinct from that of the borrower. Such situations would arise, for example, where real estate collateral is located in a state where a bank, under applicable state law, effectively does not have recourse to the borrower if the bank pursues the real estate collateral in the event of default (for example, in a ''one-action'' state or a state with a similar law). In one-action states such as Arizona, California, Idaho, Montana, Nevada, and Utah, or in a state with a similar law, such as New York, the applicable foreclosure laws materially limit a bank's ability to collect against both the collateral and the borrower.

A third instance in which exposures to the same borrower may have significantly different default probabilities is when a borrower enters bankruptcy and the bank extends additional credit to the borrower under the auspices of the bankruptcy proceedings. This so-called debtor in possession (DIP) financing is unique from other exposure types because it typically has priority over existing debt, equity, and other claims on the borrower. The agencies believe that because of this unique priority status, if a bank has an exposure to a borrower that declares bankruptcy and defaults on that exposure, and the bank subsequently provides DIP financing to that obligor, it may not be appropriate to require the bank to treat the DIP financing exposure at inception as an exposure to a defaulted borrower.

To address these circumstances and clarify the application of the one-rating-per-obligor requirement, the agencies added a definition of obligor in the final rule. The final rule defines an obligor as the legal entity or natural person contractually obligated on a wholesale exposure except that a bank may treat three types of exposures to the same legal entity or natural person as having separate obligors. First, exposures to the same legal entity or natural person denominated in different currencies. Second, (i) income-producing real estate exposures for which all or substantially all of the repayment of the exposure is reliant on cash flows of the real estate serving as collateral for the exposure;

the bank, in economic substance, does not have recourse to the borrower beyond the real estate serving as collateral for the exposure; and no cross-default or cross-acceleration clauses are in place other than clauses obtained solely in an abundance of caution; and (ii) other credit exposures to the same legal entity or natural person. Third, (i) wholesale exposures authorized under section 364 of the U.S. Bankruptcy Code (11 U.S.C. 364) to a legal entity or natural person who is a debtor-in-possession for purposes of Chapter 11 of the Bankruptcy Code; and (ii) other credit exposures to the same legal entity or natural person. All exposures to a single legal entity or natural person must be treated as exposures to a single obligor unless they qualify for one of these three exceptions in the final rule's definition of obligor.

A bank's obligor rating system must have at least seven discrete (non-overlapping) obligor grades for non-defaulted obligors and at least one obligor grade for defaulted obligors. The agencies believe that because the risk-based capital requirement of a wholesale exposure is directly linked to its obligor rating grade, a bank must have at least seven non-overlapping obligor grades to differentiate sufficiently the creditworthiness of non-defaulted wholesale obligors.

A bank must capture the estimated loss severity upon default for a wholesale exposure either by directly assigning an LGD estimate to the exposure or by grouping the exposure with other wholesale exposures into loss severity rating grades (reflecting the bank's estimate of the LGD of the exposure). LGD is described in more detail below. Whether a bank chooses to assign LGD values directly or, alternatively, to assign exposures to rating grades and then quantify the LGD for the rating grades, the key requirement is that the bank must identify exposure characteristics that influence LGD. Each of the loss severity rating grades must be associated with an empirically supported LGD estimate. Banks employing loss severity grades must have a sufficiently granular loss severity grading system to avoid grouping together exposures with widely ranging LGDs.

Retail Exposures

To implement the advanced approach for retail exposures, a bank must have an internal system that segments its retail exposures to differentiate accurately and reliably among degrees of credit risk. The most significant difference between the treatment of wholesale and retail exposures is that the risk parameters for wholesale exposures are assigned at the individual exposure level, whereas risk parameters for retail exposures are assigned at the segment level. Banks typically manage retail exposures on a segment basis, where each segment contains exposures with similar risk characteristics. Therefore, a key characteristic of the final rule's retail framework is that the risk parameters for retail exposures are assigned to segments of exposures rather than to individual exposures. Under the retail framework, a bank groups its retail exposures into segments with homogeneous risk characteristics and estimates PD and LGD for each segment.

Some commenters stated that for internal risk management purposes they assign risk parameters at the individual retail exposure level rather than at the segment level. These commenters requested confirmation that this practice would be permissible for risk-based capital purposes under the final rule. The agencies believe that a bank may use its advanced systems, including exposure-level risk parameter estimates, to group exposures into segments with homogeneous risk characteristics. Such exposure-level estimates must be aggregated in order to assign segment-level risk parameters to each segment of retail exposures.

A bank must group its retail exposures into three separate subcategories: (i) Residential mortgage exposures; (ii) QREs; and (iii) other retail exposures. The bank must classify the retail exposures in each subcategory into segments to produce a meaningful differentiation of risk. The final rule requires banks to segment separately (i) defaulted retail exposures from non-defaulted retail exposures and (ii) retail eligible margin loans for which the bank adjusts EAD rather than LGD to reflect the risk mitigating effects of financial collateral from other retail eligible margin loans. Otherwise, the agencies do not require that banks consider any particular risk drivers or employ any minimum number of segments in any of the three retail subcategories.

In determining how to segment retail exposures within each subcategory for the purpose of assigning risk parameters, a bank should use a segmentation approach that is consistent with its approach for internal risk assessment purposes and that classifies exposures according to predominant risk characteristics or drivers. Examples of risk drivers could include loan-to-value ratios, credit scores, loan terms and structure, origination channel, geographical location of the borrower, collateral type, and bank internal estimates of likelihood of default and loss severity given default. Regardless of the risk drivers used, a bank must be able to demonstrate to its primary Federal supervisor that its system assigns accurate and reliable PD and LGD estimates for each retail segment on a consistent basis.

Definition of Default

Wholesale default. In the ANPR, the agencies proposed to define default for a wholesale exposure as either or both of the following events: (i) The bank determines that the borrower is unlikely to pay its obligations to the bank in full, without recourse to actions by the bank such as the realization of collateral; or (ii) the borrower is more than 90 days past due on principal or interest on any material obligation to the bank. The ANPR's definition of default was generally consistent with the New Accord.

A number of commenters on the ANPR encouraged the agencies to use a wholesale definition of default that varied from the New Accord but conformed more closely to that used by bank risk managers. Many of these commenters recommended that the agencies define default for wholesale exposures as the entry into non-accrual or charge-off status. In the proposed rule, the agencies amended the ANPR definition of default to respond to these concerns. Under the proposed definition of default, a bank's wholesale obligor would be in default if, for any wholesale exposure of the bank to the obligor, the bank had (i) placed the exposure on non-accrual status consistent with the Consolidated Report of Condition and Income (Call Report) Instructions or the Thrift Financial Report (TFR) and the TFR Instruction Manual; (ii) taken a full or partial charge-off or write-down on the exposure due to the distressed financial condition of the obligor; or (iii) incurred a credit-related loss of 5 percent or more of the exposure's initial carrying value in connection with the sale of the exposure or the transfer of the exposure to the held-for-sale, available-for-sale, trading account, or other reporting category.

The agencies received extensive comment on the proposed definition of default for wholesale exposures. Commenters observed that the proposed definition of default was different from and more prescriptive than the definition in the New Accord and employed in other major jurisdictions. They asserted that the proposed definition would impose unjustifiable systems burden and expense on banks operating across multiple jurisdictions. Commenters also asserted that many banks' data collection systems are based on the New Accord's definition of default, and therefore historical data relevant to the proposed definition of default are limited. Moreover, commenters expressed concern that risk parameters estimated using the proposed definition of default would differ materially from those estimated using the New Accord's definition of default, resulting in different capital requirements for U.S. banks relative to their foreign peers.

The 5 percent credit-related loss trigger in the proposed definition of default for wholesale obligors was the focus of significant commenter concern. Commenters asserted that the trigger inappropriately imported LGD and maturity-related considerations into the definition of default, could hamper the use of loan sales as a risk management practice, and could cause obligors that are performing on their obligations to be considered defaulted. These commenters also claimed that the 5 percent trigger would add significant implementation burden by, for example, requiring banks to distinguish between credit-related and non-credit-related losses on sale.

Many commenters requested that the agencies conform the U.S. wholesale definition of default to the New Accord. Other commenters requested that banks be allowed the option to apply either the U.S. or the New Accord definition of default.

The agencies agree that the proposed definition of default for wholesale obligors could have unintended consequences for implementation burden and international consistency. Therefore, the final rule contains a definition of default for wholesale obligors that is similar to the definition proposed in the ANPR and consistent with the New Accord. Specifically, under the final rule, a bank's wholesale obligor is in default if, for any wholesale exposure of the bank to the obligor: (i) The bank considers that the obligor is unlikely to pay its credit obligations to the bank in full, without recourse by the bank to actions such as realizing collateral (if held); or (ii) the obligor is past due more than 90 days on any material credit obligation to the bank. The final rule also clarifies, consistent with the New Accord, that an overdraft is past due once the obligor has breached an advised limit or has been advised of a limit smaller than the current outstanding balance.

Consistent with the New Accord, the following elements may be indications of unlikeliness to pay under this definition:

(i) The bank places the exposure on non-accrual status consistent with the Call Report Instructions or the TFR and the TFR Instruction Manual;

(ii) The bank takes a full or partial charge-off or write-down on the exposure due to the distressed financial condition of the obligor;

(iii) The bank incurs a material credit-related loss in connection with the sale of the exposure or the transfer of the exposure to the held-for-sale, available-for-sale, trading account, or other reporting category;

(iv) The bank consents to a distressed restructuring of the exposure that is likely to result in a diminished financial obligation caused by the material forgiveness or postponement of principal, interest or (where relevant) fees;

(v) The bank has filed as a creditor of the obligor for purposes of the obligor's bankruptcy under the U.S. Bankruptcy Code (or a similar proceeding in a foreign jurisdiction regarding the obligor's credit obligation to the bank); or

(vi) The obligor has sought or has been placed in bankruptcy or similar protection that would avoid or delay repayment of the exposure to the bank.

If a bank carries a wholesale exposure at fair value for accounting purposes, the bank's practices for determining unlikeliness to pay for purposes of the definition of default should be consistent with the bank's practices for determining credit-related declines in the fair value of the exposure.

Like the proposed definition of default for wholesale obligors, the final rule states that a wholesale exposure to an obligor remains in default until the bank has reasonable assurance of repayment and performance for all contractual principal and interest payments on all exposures of the bank to the obligor (other than exposures that have been fully written-down or charged-off). The agencies expect a bank to employ standards for determining whether it has a reasonable assurance of repayment and performance that are similar to those for determining whether to restore a loan from non-accrual to accrual status.

Retail default. In response to comments on the ANPR, the agencies proposed to define default for retail exposures according to the timeframes for loss classification that banks generally use for internal purposes. These timeframes are embodied in the FFIEC's Uniform Retail Credit Classification and Account Management Policy.[30] Specifically, revolving retail exposures and residential mortgage exposures would be in default at 180 days past due; other retail exposures would be in default at 120 days past due. In addition, a retail exposure would be in default if the bank had taken a full or partial charge-off or write-down of principal on the exposure for credit-related reasons. Such an exposure would remain in default until the bank had reasonable assurance of repayment and performance for all contractual principal and interest payments on the exposure.

Although some commenters supported the proposed rule's retail definition of default, others urged the agencies to adopt a 90-days-past-due default trigger consistent with the New Accord's definition of default for retail exposures. Other commenters requested that a non-accrual trigger be added to the retail definition of default similar to that in the proposed wholesale definition of default. The commenters viewed this as a practical way to allow a foreign banking organization to harmonize the U.S. retail definition of default to a home country definition of default that has a 90-days-past-due trigger.

The agencies believe that adding a non-accrual trigger to the retail definition of default is not appropriate. Retail non-accrual practices vary considerably among banks, and adding a non-accrual trigger to the retail definition of default would result in greater inconsistency among banks in the treatment of retail exposures. Moreover, a bank that considers retail exposures to be defaulted at 90 days past due could have significantly different risk parameter estimates than one that uses 120- and 180-days-past-due thresholds. Such a bank would likely have higher PD estimates and lower LGD estimates due to the established tendency of a nontrivial proportion of U.S. retail exposures to "cure" or return to performing status after becoming 90 days past due and before becoming 120 or 180 days past due. The agencies believe that the 120- and 180-days-past-due thresholds, which are consistent with national discretion provided by the New Accord, reflect a point at which retail exposures in the United States are unlikely to return to performing status. Therefore, the agencies are incorporating the proposed retail definition of default without substantive change in the final rule. (Parallel to the full or partial

[30] FFIEC, "Uniform Retail Credit Classification and Account Management Policy," 65 FR 36903, June 12, 2000.

charge-off or write-down trigger for retail exposures not held at fair value, the agencies added a material negative fair value adjustment of principal for credit-related reasons trigger for retail exposures held at fair value.)

The New Accord provides discretion for national supervisors to set the retail default trigger at up to 180 days past due for different products, as appropriate to local conditions. Accordingly, banks implementing the IRB approach in multiple jurisdictions may be subject to different retail definitions of default in their home and host jurisdictions. The agencies recognize that it could be costly and burdensome for a U.S. bank to track default data and estimate risk parameters based on both the U.S. definition of default and the definitions of default in non-U.S. jurisdictions where subsidiaries of the U.S. bank implement the IRB approach. The agencies are therefore incorporating flexibility into the retail definition of default. Specifically, for a retail exposure held by a U.S. bank's non-U.S. subsidiary subject to an internal ratings-based approach to capital adequacy consistent with the New Accord in a non-U.S. jurisdiction, the final rule allows the bank to elect to use the definition of default of that jurisdiction, subject to prior approval by the bank's primary Federal supervisor. The primary Federal supervisor will revoke approval for a bank to use this provision if the supervisor finds that the bank uses the provision to arbitrage differences in national definitions of default.

The definition of default for retail exposures differs from the definition for the wholesale portfolio in that the retail default definition applies on an exposure-by-exposure basis rather than on an obligor-by-obligor basis. In other words, default on one retail exposure does not require a bank to treat all other retail obligations of the same borrower to the bank as defaulted. This difference reflects the fact that banks generally manage retail credit risk based on segments of similar exposures rather than through the assignment of ratings to particular borrowers. In addition, it is quite common for retail borrowers that default on some of their obligations to continue payment on others.

Although the retail definition of default does not explicitly include credit-related losses in connection with loan sales and the agencies have replaced the 5 percent credit-related loss threshold for wholesale exposures with a less prescriptive treatment that is consistent with the New Accord, the agencies expect banks to ensure that exposure sales do not bias or otherwise distort the estimated risk parameters assigned by a bank to its wholesale exposures and retail segments.

Rating Philosophy

A bank's internal risk rating policy for wholesale exposures must describe the bank's rating philosophy, which is how the bank's wholesale obligor rating assignments are affected by the bank's choice of the range of economic, business, and industry conditions that are considered in the obligor rating process. The philosophical basis of a bank's rating system is important because, when combined with the credit quality of individual obligors, it will determine the frequency of obligor rating changes in a changing economic environment. Rating systems that rate obligors based on their ability to perform over a wide range of economic, business, and industry conditions, sometimes described as ''through-the-cycle'' systems, tend to have ratings that migrate more slowly as conditions change. Banks that rate obligors based on a more narrow range of likely expected conditions (primarily on recent conditions), sometimes called ''point-in-time'' systems, tend to have ratings that migrate more frequently. Many banks will rate obligors using an approach that considers a combination of the current conditions and a wider range of other likely conditions. In any case, the bank must specify the rating philosophy used and establish a policy for the migration of obligors from one rating grade to another in response to economic cycles. A bank should understand the effects of ratings migration on its risk-based capital requirements and ensure that sufficient capital is maintained during all phases of the economic cycle.

Rating and Segmentation Reviews and Updates

Each wholesale obligor rating and (if applicable) wholesale exposure loss severity rating must reflect current information. A bank's internal risk rating system for wholesale exposures must provide for the review and update (as appropriate) of each obligor rating and (if applicable) loss severity rating whenever the bank receives new material information, but no less frequently than annually. Under the proposed rule, a bank's retail exposure segmentation system would provide for the review and update (as appropriate) of assignments of retail exposures to segments whenever the bank received new material information. The proposed rule specified that the review would be required no less frequently than quarterly.

One commenter noted that quarterly reviews may not be appropriate for high-quality retail portfolios, such as retail exposures associated with a bank's wealth management or private banking businesses. The commenter suggested that banks should have the flexibility to review and update segmentation assignments for such portfolios on a less frequent basis appropriate to the credit quality of the portfolios.

The agencies agree that it may be appropriate for a bank to review and update segmentation assignments for certain high-quality retail exposures on a less frequent basis than quarterly, provided a bank is following sound risk management practices. Therefore, the final rule generally requires a quarterly review and update, as appropriate, of retail exposure segmentation assignments, allowing some flexibility to accommodate sound internal risk management practices.

3. Quantification of Risk Parameters for Wholesale and Retail Exposures

A bank must have a comprehensive risk parameter quantification process that produces accurate, timely, and reliable estimates of the risk parameters—PD, LGD, EAD, and (for wholesale exposures) M—for its wholesale obligors and exposures and retail exposures. Statistical methods and models used to develop risk parameter estimates, as well as any adjustments to the estimates or empirical data, should be transparent, well supported, and documented. The following sections of the preamble discuss the rule's definitions of the risk parameters for wholesale exposures and retail segments.

Probability of Default (PD)

As noted above, under the final rule, a bank must assign each of its wholesale obligors to an internal rating grade and then must associate a PD with each rating grade. PD for a wholesale exposure to a non-defaulted obligor is the bank's empirically based best estimate of the long-run average one-year default rate for the rating grade assigned by the bank to the obligor, capturing the average default experience for obligors in the rating grade over a mix of economic conditions (including economic downturn conditions) sufficient to provide a reasonable estimate of the average one-year default rate over the economic cycle for the rating grade.

In addition, under the final rule, a bank must assign a PD to each segment of retail exposures. Some types of retail exposures typically display a seasoning pattern—that is, the exposures have relatively low default rates in their first year, rising default rates in the next few years, and declining default rates for the remainder of their terms. Because of the one-year IRB horizon, the proposed rule provided two different definitions of PD for a segment of non-defaulted retail exposures based on the materiality of seasoning effects for the segment or for the segment's retail exposure subcategory. Under the proposed rule, PD for a segment of non-defaulted retail exposures for which seasoning effects *were not* material, or for a segment of non-defaulted retail exposures in a retail exposure subcategory for which seasoning effects *were not* material, would be the bank's empirically based best estimate of the long-run average of one-year default rates for the exposures in the segment, capturing the average default experience for exposures in the segment over a mix of economic conditions (including economic downturn conditions) sufficient to provide a reasonable estimate of the average one-year default rate over the economic cycle for the segment. PD for a segment of non-defaulted retail exposures for which seasoning effects *were* material would be the bank's empirically based best estimate of the annualized cumulative default rate over the expected remaining life of exposures in the segment, capturing the average default experience for exposures in the segment over a mix of economic conditions (including economic downturn conditions) to provide a reasonable estimate of the average performance over the economic cycle for the segment.

Commenters objected to this treatment of retail exposures with material seasoning effects. They asserted that requiring banks to use an annualized cumulative default rate to recognize seasoning effects was too prescriptive and would preclude other reasonable approaches. The agencies believe that commenters have presented reasonable alternative approaches to recognizing the effects of seasoning in PD and are, therefore, providing additional flexibility for recognizing those effects in the final rule.

Based on comments and additional consideration, the agencies also are clarifying that a segment of retail exposures has material seasoning effects if there is a material relationship between the time since origination of exposures within the segment and the bank's best estimate of the long-run average one-year default rate for the exposures in the segment. Moreover, because the agencies believe that the IRB approach must, at a minimum, require banks to hold appropriate amounts of risk-based capital to address credit risks over a one-year horizon, the final rule's incorporation of seasoning effects is explicitly one-directional. Specifically, a bank must increase PDs above the best estimate of the long-run average one-year default rate for segments of unseasoned retail exposures, but may not decrease PD below the best estimate of the long-run average one-year default rate for a segment of retail exposures that the bank estimates will have lower PDs in future years due to seasoning.

The final rule defines PD for a segment of non-defaulted retail exposures as the bank's empirically based best estimate of the long-run average one-year default rate for the exposures in the segment, capturing the average default experience for exposures in the segment over a mix of economic conditions (including economic downturn conditions) sufficient to provide a reasonable estimate of the average one-year default rate over the economic cycle for the segment and adjusted upward as appropriate for segments for which seasoning effects are material. If a bank does not adjust PD to reflect seasoning effects for a segment of exposures, it should be able to demonstrate to its primary Federal supervisor, using empirical analysis, why seasoning effects are not material or why adjustment is not relevant for the segment.

For wholesale exposures to defaulted obligors and for segments of defaulted retail exposures, PD is 100 percent.

Loss Given Default (LGD)

Under the proposed rule, a bank would directly estimate an ELGD and LGD risk parameter for each wholesale exposure or would assign each wholesale exposure to an expected loss severity grade and a downturn loss severity grade, estimate an ELGD risk parameter for each expected loss severity grade, and estimate an LGD risk parameter for each downturn loss severity grade. In addition, a bank would estimate an ELGD and LGD risk parameter for each segment of retail exposures.

Expected Loss Given Default (ELGD)

The proposed rule defined the ELGD of a wholesale exposure as the bank's empirically based best estimate of the default-weighted average economic loss per dollar of EAD the bank expected to incur in the event that the obligor of the exposure (or a typical obligor in the loss severity grade assigned by the bank to the exposure) defaulted within a one-year horizon.[31] The proposed rule defined ELGD for a segment of retail exposures as the bank's empirically based best estimate of the default-weighted average economic loss per dollar of EAD the bank expected to incur on exposures in the segment that default within a one-year horizon. ELGD estimates would incorporate a mix of economic conditions (including economic downturn conditions). ELGD had four functions in the proposed rule—as a component of the calculation of ECL in the numerator of the risk-based capital ratios; in the EL component of the IRB risk-based capital formulas; as a floor on the value of the LGD risk parameter; and as an input into the supervisory mapping function.

Many commenters objected to the proposed rule's requirement for banks to estimate ELGD for each wholesale exposure and retail segment, noting that ELGD estimation is not required under the New Accord. Commenters asserted that requiring ELGD estimation would create a competitive disadvantage by creating additional systems, compliance, calculation, and reporting burden for those banks subject to the U.S. rule, many of which have already substantially developed their systems based on the New Accord. They also maintained that it would decrease the comparability of U.S. banks' capital requirements and public disclosures relative to those of foreign banking organizations applying the advanced approaches. Several commenters also contended that defining ECL in terms of ELGD instead of LGD raised tier 1 risk-based capital requirements for U.S. banks compared to foreign banks using the New Accord's LGD-based ECL definition.

The agencies have concluded that the regulatory burden and potential competitive inequities identified by commenters outweigh the supervisory benefits of the proposed ELGD risk parameter, and are, therefore, not including it in the final rule. Instead, consistent with the New Accord, a bank must use LGD for the calculation of ECL and the EL component of the IRB risk-based capital formulas. Because the proposed ELGD risk parameter was equal to or less than LGD, this change generally will have the effect of decreasing both the numerator and denominator of the risk-based capital ratios.

Consistent with the New Accord, under the final rule, the LGD of a wholesale exposure or retail segment must not be less than the bank's

[31] Under the proposal, ELGD was not the statistical expected value of LGD.

empirically based best estimate of the long-run default-weighted average economic loss, per dollar of EAD, the bank would expect to incur if the obligor (or a typical obligor in the loss severity grade assigned by the bank to the exposure or segment) were to default within a one-year horizon over a mix of economic conditions, including economic downturn conditions. The final rule also specifies that LGD may not be less than zero. The implications of eliminating the ELGD risk parameter for the supervisory mapping function are discussed below.

Economic Loss and Post-Default Extensions of Credit

Commenters requested additional clarity regarding the treatment of post-default extensions of credit. LGD is an estimate of the economic loss that would be incurred on an exposure, relative to the exposure's EAD, if the obligor were to default within a one-year horizon during economic downturn conditions. The estimated economic loss amount must capture all material credit-related losses on the exposure (including accrued but unpaid interest or fees, losses on the sale of repossessed collateral, direct workout costs, and an appropriate allocation of indirect workout costs). Where positive or negative cash flows on a wholesale exposure to a defaulted obligor or on a defaulted retail exposure (including proceeds from the sale of collateral, workout costs, and draw-downs of unused credit lines) are expected to occur after the date of default, the estimated economic loss amount must reflect the net present value of cash flows as of the default date using a discount rate appropriate to the risk of the exposure. The possibility of post-default extensions of credit made to facilitate collection of an exposure would be treated as negative cash flows and reflected in LGD.

For example, assume a loan to a retailer goes into default. The bank determines that the recovery would be enhanced by some additional expenditure to ensure an orderly workout process. One option would be for the bank to hire a third-party to facilitate the collection of the loan. Another option would be for the bank to extend additional credit directly to the defaulted obligor to allow the obligor to make an orderly liquidation of inventory. Both options represent negative cash flows on the original exposure, which must be discounted at a rate that is appropriate to the risk of the exposure.

Economic Downturn Conditions

The expected loss severities of some exposures may be substantially higher during economic downturn conditions than during other periods, while for other types of exposures they may not. Accordingly, the proposed rule required banks to use an LGD estimate that reflected economic downturn conditions for purposes of calculating the risk-based capital requirements for wholesale exposures and retail segments.

Several commenters objected to the requirement that LGD estimates must reflect economic downturn conditions. Some of these commenters stated that empirical evidence of correlation between economic downturn and LGD is inconclusive, except in certain cases. A few noted that estimates of expected LGD include conservative inputs, such as a conservative estimate of potential loss in the event of default or a conservative discount rate or collateral assumptions. One commenter suggested that if a bank can demonstrate it has been prudent in its LGD estimation and it has no evidence of the cyclicality of LGDs, it should not be required to calculate downturn LGDs. Other commenters remarked that the requirement to incorporate downturn conditions into LGD estimates should not be used as a surrogate for proper modeling of PD/LGD correlations. Finally, a number of commenters supported a pillar 2 approach for addressing LGD estimation.

Consistent with the New Accord, the final rule maintains the requirement for a bank to use an LGD estimate that reflects economic downturn conditions for purposes of calculating the risk-based capital requirements for wholesale exposures and retail segments. More specifically, banks must produce for each wholesale exposure (or loss severity rating grade) and retail segment an estimate of the economic loss per dollar of EAD that the bank would expect to incur if default were to occur within a one-year horizon during economic downturn conditions.

For the purpose of defining economic downturn conditions, the proposed rule identified two wholesale exposure subcategories—high-volatility commercial real estate (HVCRE) wholesale exposures and non-HVCRE wholesale exposures (that is, all wholesale exposures that are not HVCRE exposures)—and three retail exposure subcategories—residential mortgage exposures, QREs, and other retail exposures. The proposed rule defined economic downturn conditions with respect to an exposure as those conditions in which the aggregate default rates for the exposure's entire wholesale or retail subcategory held by the bank (or subdivision of such subcategory selected by the bank) in the exposure's national jurisdiction (or subdivision of such jurisdiction selected by the bank) were significantly higher than average.

The agencies specifically sought comment on whether to require banks to determine economic downturn conditions at a more granular level than an entire wholesale or retail exposure subcategory in a national jurisdiction. Some commenters stated that the proposed requirement is at a sufficiently granular level. Others asserted that the requirement should be eliminated or made less granular. Those commenters favoring less granularity stated that aggregate default rates for different product subcategories in different countries are unlikely to peak at the same time and that requiring economic downturn analysis at the product subcategory and national jurisdiction level does not recognize potential diversification effects across products and national jurisdictions and is thus overly conservative. Commenters also maintained that the proposed granularity requirement adds complexity and implementation burden relative to the New Accord.

The agencies believe that the proposed definition of economic downturn conditions incorporates an appropriate level of granularity and are incorporating it unchanged in the final rule. The agencies understand that downturns in particular geographical subdivisions of national jurisdictions or in particular industrial sectors may result in significantly increased loss rates in material subdivisions of a bank's exposures. The agencies also recognize that diversification across those subdivisions may mitigate risk for the overall organization. However, the agencies believe that the required minimum level of granularity at the subcategory and national jurisdiction level provides a suitable balance between allowing for the benefits of diversification and appropriate conservatism for risk-based capital requirements.

Under the final rule, a bank must consider economic downturn conditions that appropriately reflect its actual exposure profile. For example, a bank with a geographical or industry sector concentration in a subcategory of exposures may find that information relating to a downturn in that geographical region or industry sector may be more relevant for the bank than a general downturn affecting many regions or industries. The final rule (like the proposed rule) allows banks to subdivide exposure subcategories or national jurisdictions as they deem appropriate given the exposures held by the bank. Moreover, the agencies note that the exposure subcategory/national jurisdiction granularity requirement is only a minimum granularity requirement.

Supervisory Mapping Function

The proposed rule provided banks two methods of generating LGD estimates for wholesale exposures and retail segments. First, a bank could use its own estimates of LGD for a subcategory of exposures if the bank had prior written approval from its primary Federal supervisor to use internal estimates for that subcategory of exposures. In approving a bank's use of internal estimates of LGD, a bank's primary Federal supervisor would consider whether the bank's internal estimates of LGD were reliable and sufficiently reflective of economic downturn conditions. The supervisor would also consider whether the bank has rigorous and well-documented policies and procedures for identifying economic downturn conditions for the exposure subcategory, identifying material adverse correlations between the relevant drivers of default rates and loss rates given default, and incorporating identified correlations into internal LGD estimates. If a bank had supervisory approval to use its own estimates of LGD for an exposure subcategory, it would use its own estimates of LGD for all exposures within that subcategory.

As an alternative to internal estimates of LGD, the proposed rule provided a supervisory mapping function for converting ELGD into LGD for risk-based capital purposes. A bank that did not qualify to use its own estimates of LGD for a subcategory of exposures would instead compute LGD using the linear supervisory mapping function: $LGD = 0.08 + 0.92 \times ELGD$. A bank would not have to apply the supervisory mapping function to repo-style transactions, eligible margin loans, and OTC derivative contracts (defined below in section V.C. of this preamble). The agencies proposed the supervisory mapping function because of concerns that banks may find it difficult to produce internal estimates of LGD that are sufficient for risk-based capital purposes because LGD data for important portfolios may be sparse, and there is limited industry experience with incorporating downturn conditions into LGD estimates. The supervisory mapping function provided a pragmatic methodology for banks to use while refining their LGD estimation techniques.

In general, commenters viewed the supervisory mapping function as a significant deviation from the New Accord that would add unwarranted prescriptiveness and regulatory burden to the U.S. rule. Commenters requested more flexibility to address problems with LGD estimation, including the ability to apply appropriate margins of conservatism as contemplated in the New Accord. Commenters expressed concern that U.S. supervisors would employ an unreasonably high standard for allowing own estimates of LGD, forcing banks to use the supervisory mapping function for an extended period of time. Commenters also expressed concern that supervisors would view the output of the supervisory mapping function as a floor on internal estimates of LGD. Commenters asserted that in both cases risk-based capital requirements would be increased at U.S. banks relative to their foreign competitors, particularly for high-quality assets, putting U.S. banks at a competitive disadvantage to foreign banks.

In particular, many commenters viewed the supervisory mapping function as overly punitive for exposure categories with relatively low loss severities, effectively imposing an 8 percent floor on LGD. Commenters also objected to the proposed requirement that a bank use the supervisory mapping function for an entire subcategory of exposures even if it had difficulty estimating LGD only for a small subset of those exposures.

The agencies continue to believe that the supervisory mapping function is a reasonable aid for dealing with problems in LGD estimation. The agencies recognize, however, that there may be several valid methodologies for addressing such problems. For example, a relative scarcity of historical loss data for a particular obligor or exposure type may be addressed by increased reliance on alternative data sources and data-enhancing tools for quantification and alternative techniques for validation. In addition, a bank should reflect in its estimates of risk parameters a margin of conservatism that is related to the likely range of uncertainty. These concepts are discussed below in the quantification principles section of the preamble.

Therefore, the agencies are not including the supervisory mapping function in the final rule. However, the agencies continue to believe that the function (and associated estimation of the long-run default-weighted average economic loss rate given default within a one-year horizon) is one way a bank could address difficulties in estimating LGD. However it chooses to estimate LGD, a bank's estimates of LGD must be reliable and sufficiently reflective of economic downturn conditions, and the bank should have rigorous and well-documented policies and procedures for identifying economic downturn conditions for each exposure subcategory, identifying changes in material adverse relationships between the relevant drivers of default rates and loss rates given default, and incorporating identified relationships into LGD estimates.

Pre-Default Reductions in Exposure

The proposed rule incorporated comments on the ANPR suggesting a need to better accommodate certain credit products, most prominently asset-based lending programs, whose structures typically result in a bank recovering substantial amounts of the exposure prior to the default date—for example, through paydowns of outstanding principal. The agencies believe that actions taken prior to default to mitigate losses are an important component of a bank's overall credit risk management, and that such actions should be reflected in LGD when banks can quantify their effectiveness in a reliable manner. In the proposed rule, this was achieved by measuring LGD relative to the exposure's EAD (defined in the next section) as opposed to the amount actually owed at default.[32]

Commenters agreed that the IRB approach should allow banks to recognize in their risk parameters the benefits of expected pre-default recoveries and other expected reductions in exposure prior to default. Some commenters suggested, however, that it is more appropriate to reflect pre-default recoveries in EAD rather than LGD. Other commenters supported the proposed rule's approach or asserted that banks should have the option of incorporating pre-default recoveries in either LGD or EAD. Commenters discouraged the agencies from restricting the types of pre-default

[32] To illustrate, suppose that for a particular asset-based lending exposure the EAD equaled \$100 and that for every \$1 owed by the obligor at the time of default the bank's recovery would be \$0.40. Furthermore, suppose that in the event of default within a one-year horizon, pre-default paydowns of \$20 would reduce the exposure amount to \$80 at the time of default. In this case, the bank's economic loss rate measured relative to the amount owed at default (60 percent) would exceed the economic loss rate measured relative to EAD (48 percent = $.60 \times (\$100 - \$20)/\$100$), because the former does not reflect fully the impact of the pre-default paydowns.

reductions in exposure that could be recognized, and generally contended that the reductions should be recognized for all exposures for which a pattern of pre-default reductions can be estimated reliably and accurately by the bank.

Consistent with the New Accord, the agencies have decided to maintain the proposed treatment of pre-default reductions in exposure in the final rule. The final rule does not limit the exposure types to which a bank may apply this treatment. However, the agencies have clarified their requirement for quantification of LGD in section 22(c)(4) of the final rule. This section states that where the bank's quantification of LGD directly or indirectly incorporates estimates of the effectiveness of its credit risk management practices in reducing its exposure to troubled obligors prior to default, the bank must support such estimates with empirical analysis showing that the estimates are consistent with its historical experience in dealing with such exposures during economic downturn conditions.

A bank's methods for reflecting changes in exposure during the period prior to default must be consistent with other aspects of the final rule. For example, a bank must use a default horizon no longer than one year, consistent with the one-year default horizon incorporated in other aspects of the final rule, such as the quantification of PD. In addition, a pre-default reduction in the outstanding amount on one exposure that does not reflect a reduction in the bank's total exposure to the obligor, such as a refinancing, should not be reflected as a pre-default recovery for LGD quantification purposes.

The following simplified example illustrates how a bank could approach incorporating pre-default reductions in exposure in LGD. Assume a bank has a portfolio of asset-based loans fully collateralized by receivables. The bank maintains a database of such loans that have defaulted, which records the exposure at the time of default and the losses incurred at and after the date of default. After careful analysis of its historical data, the bank finds that for every $100 of exposure on a typical asset-based loan at the time of default, properly discounted average losses are $80 under economic downturn conditions. Thus, the bank may assign an LGD estimate of 80 percent that is based on such evidence.

However, assume that the bank division responsible for collections reports that the bank's loan workout practices generally result in exposures on the asset-based loans being significantly reduced between the time the loan is identified internally as a problem exposure and the time when the obligor is in default for risk-based capital purposes. The bank studies the pre-default paydown behavior of obligors that default within the next one-year horizon and during economic downturn conditions. In particular, the bank uses its internal historical data to map exposure amounts for asset-based loans at the time of default to exposure amounts for the same loans at various points in time prior to default and confirms that the pattern of pre-default paydowns corresponds to reductions in the bank's overall exposures to the obligors, as opposed to refinancings.

Robust empirical analysis further indicates that pre-default paydowns for asset-based loans to obligors that default within the next one-year horizon during economic downturn conditions depend on the length of time the loan has been subject to workout. Specifically, the bank finds that the prospects for further pre-default paydowns diminish markedly the longer the bank has managed the loan as a problem credit exposure. For loans that are not in workout or that the bank has placed in workout for fewer than 90 days, the bank's analysis indicates that pre-default paydowns on loans to obligors defaulting within the next year during economic downturn conditions were, on average, 50 percent of the current amount owed by the obligor. In contrast, for asset-based loans that have been in workout for at least 90 days, the bank's analysis indicates that any further pre-default recoveries tend to be immaterial. Thus, provided this analysis is suitable for estimating LGDs according to section 22(c) of the final rule, the bank may appropriately assign an LGD estimate of 40 percent to asset-based loans that are not in workout or that have been in workout for fewer than 90 days. For asset-based loans that have been in workout for at least 90 days, the bank should assign an LGD of 80 percent.

Exposure at Default (EAD)

Under the proposed rule, EAD for the on-balance sheet component of a wholesale or retail exposure generally was (i) the bank's carrying value for the exposure (including net accrued but unpaid interest and fees) [33] less any allocated transfer risk reserve for the exposure, if the exposure was classified as held-to-maturity or for trading; or (ii) the bank's carrying value for the exposure (including net accrued but unpaid interest and fees) less any allocated transfer risk reserve for the exposure and any unrealized gains on the exposure plus any unrealized losses on the exposure, if the exposure was classified as available-for-sale.

One commenter asserted that banks should not be required to include net accrued but unpaid interest and fees in EAD. Rather, this commenter requested the flexibility to incorporate such interest and fees in either EAD or LGD. The agencies believe that net accrued but unpaid interest and fees represent credit exposure to an obligor, similar to the unpaid principal of a loan extended to the obligor, and thus are most appropriately included in EAD. Moreover, requiring all banks to include such interest and fees in EAD rather than LGD promotes consistency and comparability across banks for regulatory reporting and public disclosure purposes.

The agencies are therefore maintaining the substance of the proposed rule's definition of EAD for on-balance sheet exposures in the final rule. The final rule clarifies that, for purposes of EAD, all exposures other than securities classified as available-for sale receive the treatment specified for exposures classified as held-to-maturity or for trading under the proposal. Some exposures held at fair value, such as partially funded loan commitments, may have both on-balance sheet and off-balance sheet components. In such cases, a bank must compute EAD for both the positive on- and off-balance sheet components of the exposure.

For the off-balance sheet component of a wholesale or retail exposure (other than an OTC derivative contract, repo-style transaction, or eligible margin loan) in the form of a loan commitment or line of credit, EAD under the proposed rule was the bank's best estimate of net additions to the outstanding amount owed the bank, including estimated future additional draws of principal and accrued but unpaid interest and fees, that were likely to occur over the remaining life of the exposure assuming the exposure were to go into default. This estimate of net additions would reflect what would be expected during a period of economic downturn conditions. This treatment is retained in the final rule. Also, consistent with the New Accord, the final rule extends this ''own estimates'' treatment to trade-related letters of credit and for transaction-related contingencies. Trade-related letters of credit are short-term self-liquidating instruments used to finance the movement of goods and are

[33] ''Net accrued but unpaid interest and fees'' are accrued but unpaid interest and fees net of any amount expensed by the bank as uncollectable.

collateralized by the underlying goods. A transaction-related contingency includes such items as a performance bond or performance-based standby letter of credit.

For the off-balance sheet component of a wholesale or retail exposure other than an OTC derivative contract, repo-style transaction, eligible margin loan, loan commitment, or line of credit issued by a bank, EAD was the notional amount of the exposure. This treatment is retained in the final rule.

One commenter asked the agencies to permit banks to employ the New Accord's flexibility to reflect additional draws on lines of credit in either LGD or EAD. For the same reasons that the agencies are requiring banks to include net accrued but unpaid interest and fees in EAD, the agencies have decided to continue the requirement in the final rule for banks to reflect estimates of additional draws in EAD, consistent with the proposed rule.

Another commenter noted that the ''remaining life of the exposure'' concept in the proposed definition of EAD for off-balance sheet exposures is ambiguous and inconsistent with defining PD over a one-year horizon. To address this commenter's concern, the agencies have modified the definition of EAD. The final rule requires a bank to estimate net additions to the outstanding amount owed the bank in the event of default over a one-year horizon.

Other commenters noted that banks may reduce their exposure to certain sectors in periods of economic downturn, and inquired as to the extent to which such practices may be reflected in EAD estimates. The agencies believe that such practices may be reflected in EAD estimates for loan commitments, lines of credit, trade-related letters of credit, and transaction-related contingencies to the extent that those practices are reflected in the bank's data on defaulted exposures. They may be reflected in EAD estimates for on-balance sheet exposures only at the time the on-balance sheet exposure is actually reduced.

To illustrate the EAD concept, assume a bank has a $100 unsecured, fully drawn, two-year term loan with $10 of interest payable at the end of the first year and a balloon payment of $110 at the end of the term. Suppose it has been six months since the loan's origination, and accrued interest equals $5. The EAD of this loan would be equal to the outstanding principal amount plus accrued interest, or $105.

Next, consider the case of an open-end revolving credit line of $100, on which the borrower had drawn $70 (the unused portion of the line is $30). Current accrued but unpaid interest and fees are zero. The bank can document that, on average, during economic downturn conditions, 20 percent of the remaining undrawn amounts are drawn in the year preceding a firm's default. Therefore, the bank's estimate of future draws is $6 (20% × $30). Additionally, the bank's analysis indicates that, on average, during economic downturn conditions, such a facility can be expected to have accrued at the time of default unpaid interest and commitment fees equal to three months of interest against the drawn amount and 0.5 percent against the undrawn amount, which in this example is assumed to equal $0.25. Thus, the EAD for estimated future accrued but unpaid interest and fees equals $0.25. In sum, the EAD should be the drawn amount plus estimated future accrued but unpaid fees plus the estimated amount of future draws = $76.25 ($70 + $0.25 + $6).

Under the proposed rule, EAD for a segment of retail exposures was the sum of the EADs for each individual exposure in the segment. The agencies have changed this provision in the final rule, recognizing that banks typically estimate EAD for a segment of retail exposures rather than on an individual exposure basis.

Under the final and proposed rules, for wholesale or retail exposures in which only the drawn balance has been securitized, the bank must reflect its share of the exposures' undrawn balances in EAD. The undrawn balances of revolving exposures for which the drawn balances have been securitized must be allocated between the seller's and investors' interests on a pro rata basis, based on the proportions of the seller's and investors' shares of the securitized drawn balances. For example, if the EAD of a group of securitized exposures' undrawn balances is $100, and the bank's share (seller's interest) in the securitized exposures is 25 percent, the bank must reflect $25 in EAD for the undrawn balances.

The final rule (like the proposed rule) contains a separate treatment of EAD for OTC derivative contracts, which is in section 32 of the rule and discussed in more detail in section V.C. of the preamble. The final rule also clarifies that a bank may use the treatment of EAD in section 32 of the rule for repo-style transactions and eligible margin loans, or the bank may use the general definition of EAD described in this section for such exposures.

General Quantification Principles

The final rule, like the proposed rule, requires data used by a bank to estimate risk parameters to be relevant to the bank's actual wholesale and retail exposures and of sufficient quality to support the determination of risk-based capital requirements for the exposures. For wholesale exposures, estimation of the risk parameters must be based on a minimum of five years of default data to estimate PD, seven years of loss severity data to estimate LGD, and seven years of exposure amount data to estimate EAD. For segments of retail exposures, estimation of risk parameters must be based on a minimum of five years of default data to estimate PD, five years of loss severity data to estimate LGD, and five years of exposure amount data to estimate EAD. Default, loss severity, and exposure amount data must include periods of economic downturn conditions or the bank must adjust its estimates of risk parameters to compensate for the lack of data from such periods. Banks must base their estimates of PD, LGD, and EAD on the final rule's definition of default, and must review at least annually and update (as appropriate) their risk parameters and risk parameter quantification process.

In all cases, banks are expected to use the best available data for quantifying the risk parameters. A bank could meet the minimum data requirement by using internal data, external data, or pooled data combining internal data with external data. Internal data refers to any data on exposures held in a bank's existing or historical portfolios, including data elements or information provided by third parties regarding such exposures. External data refers to information on exposures held outside of the bank's portfolio or aggregate information across an industry. For new lines of business, where a bank lacks sufficient internal data, a bank likely will need to use external data to supplement its internal data.

The agencies recognize that the minimum sample period for reference data provided in the final rule may not provide the best available results. A longer sample period usually captures varying economic conditions better than a shorter sample period. In addition, a longer sample period will include more default observations for LGD and EAD estimation. Banks should consider using a longer-than-minimum sample period when possible. However, the potential increase in precision afforded by a larger sample size should be weighed against the potential for diminished comparability of older data to the existing portfolio.

Portfolios With Limited Data or Limited Defaults

Many commenters requested further clarity about the procedures that banks should use to estimate risk parameters for portfolios characterized by a lack of internal data or with very little default experience. In particular, the GAO report recommended that the agencies provide additional clarity on this issue. Several commenters indicated that the agencies should establish criteria for identifying homogeneous portfolios of low-risk exposures and allow banks to apportion expected loss between LGD and PD for those portfolios rather than estimating each risk parameter separately. Other commenters suggested that the agencies consider whether banks should be permitted to use the New Accord's standardized approach for credit risk for such portfolios.

The final rule requires banks to meet the qualification requirements in section 22 for all portfolios of exposures. The agencies expect that banks demonstrating appropriately rigorous processes and sufficient degrees of conservatism for portfolios with limited data or limited defaults will be able to meet the qualification requirements. Section 22(c)(3) of the final rule specifically states that a bank's risk parameter quantification process ''must produce appropriately conservative risk parameter estimates where the bank has limited relevant data.'' The agencies believe that this section provides sufficient flexibility and incentives for banks to develop and document sound practices for applying the IRB approach to portfolios lacking sufficient data.

The section of the preamble below expands upon potential approaches to portfolios with limited data. The BCBS publication ''Validation of low-default portfolios in the Basel II Framework'' [34] also provides a resource for banks facing this issue. The agencies will work with banks through the supervisory and examination processes to address particular situations.

Portfolios with limited data. The final rule, like the proposal, permits the use of external data in quantification of risk parameters. External data should be informative of, and appropriate to, a bank's existing exposures. In some cases, a bank may be able to acquire and use external data from a third party to estimate risk parameters until the bank's internal database meets the requirements of the rule. Alternatively, a bank may be able to identify a set of data-rich internal exposures that could be used to inform the estimation of risk parameters for the portfolio for which it has insufficient data. The key considerations for a bank in determining whether to use alternative data sources will be whether such data are sufficiently accurate, complete, representative and informative of the bank's existing exposures and whether the bank's quantification of risk parameters is rigorously conducted and well documented.

For instance, consider a bank that has recently extended its credit card operations to include a new market segment for credit card loans and, therefore, has limited internal data on the performance of the exposures in this new market segment. The bank could acquire external data from various vendors that would provide a broad, market-wide picture of default and loss experience in the new market segment. This external data could then be supplemented by the bank's internal data and experience with its existing credit card operations. By comparing the bank's experience with its existing customers to the market data, the bank can refine the risk parameters estimated from the external data on the new market segment and make those parameters more accurate for the bank's new market segment of exposures. Using the combination of these data sources, the bank may be able to estimate appropriately conservative estimates of risk parameters for its new market segment of exposures. If the bank is not able to do so, it must include the new market segment of exposures in its set of aggregate immaterial exposures and apply a 100 percent risk weight.

Portfolios with limited defaults. Commenters indicated that they had experienced very few defaults for some portfolios, most notably margin loans and exposures to some sovereign issuers, which made it difficult to separately estimate PD and LGD. The agencies recognize that some portfolios have experienced very few defaults and have very low loss experiences. The absence of defaults or losses in historical data does not, however, preclude the potential for defaults or large losses to arise in future circumstances. Moreover, as discussed previously, the ability to separate EL into PD and LGD is a key component of the IRB approach.

As with the cases described above in which internal data are limited in all dimensions, external data from some related portfolios or for similar obligors may be used to estimate risk parameters that are then mapped to the low default portfolio or obligor. For example, banks could consider instances of near default or credit deterioration short of default in these low default portfolios to inform estimates of what might happen if a default were to occur. Similarly, scenario analysis that evaluates the hypothetical impact of severe market disruptions may help inform the bank's parameter estimates for margin loans. For very low-risk wholesale obligors that have publicly traded financial instruments, banks may be able to glean information about the relative values of PD and LGD from different changes in credit spreads on instruments of different maturity or from different moves in credit spreads and equity prices. In all cases, risk parameter estimates should incorporate a degree of conservatism that is appropriate for the overall rigor of the quantification process.

Other quantification process considerations. Both internal and external reference data should not differ systematically from a bank's existing portfolio in ways that seem likely to be related to default risk, loss severity, or exposure at default. Otherwise, the derived PD, LGD, or EAD estimates may not be applicable to the bank's existing portfolio. Accordingly, the bank must conduct a comprehensive review and analysis of reference data at least annually to determine the relevance of reference data to the bank's exposures, the quality of reference data to support PD, LGD, and EAD estimates, and the consistency of reference data to the definition of default in the final rule. Furthermore, a bank must have adequate internal or external data to estimate the risk parameters PD, LGD, and EAD (each of which incorporates a one-year time horizon) for all wholesale exposure and retail segments, including those originated for sale or that are in the securitization pipeline.

As noted above, periods of economic downturn conditions must be included in the data sample (or adjustments to risk parameters must be made). If the reference data include data from beyond the minimum number of years (to capture a period of economic downturn conditions or for other valid reasons), the reference data need not cover all of the intervening years. However, a bank should justify the exclusion of available data and, in particular, any temporal discontinuities in data used. Including periods of economic downturn conditions increases the size and potentially the breadth of the reference data set. According to some empirical studies, the average loss rate is higher during periods of economic downturn

[34] BCBS, Basel Committee Newsletter No. 6, ''Validation of low-default portfolios in the Base II Framework,'' September 2005.

conditions, such that exclusion of such periods would bias LGD or EAD estimates downward and unjustifiably lower risk-based capital requirements.

Risk parameter estimates should take into account the robustness of the quantification process. The assumptions and adjustments embedded in the quantification process should reflect the degree of uncertainty or potential error inherent in the process. In practice, a reasonable estimation approach likely would result in a range of defensible risk parameter estimates. The choices of the particular assumptions and adjustments that determine the final estimate, within the defensible range, should reflect the uncertainty in the quantification process. More uncertainty in the process should be reflected in the assignment of final risk parameter estimates that result in higher risk-based capital requirements relative to a quantification process with less uncertainty. The degree of conservatism applied to adjust for uncertainty should be related to factors such as the relevance of the reference data to a bank's existing exposures, the robustness of the models, the precision of the statistical estimates, and the amount of judgment used throughout the process. A bank is not required to add a margin of conservatism at each step if doing so would produce an excessively conservative result. Instead, the overall margin of conservatism should adequately account for all uncertainties and weaknesses in the quantification process. Improvements in the quantification process (including use of more complete data and better estimation techniques) may reduce the appropriate degree of conservatism over time.

Judgment will inevitably play a role in the quantification process and may materially affect the estimates of risk parameters. Judgmental adjustments to estimates are often necessary because of limitations on available reference data or because of inherent differences between the reference data and the bank's existing exposures. The bank's risk parameter quantification process must produce appropriately conservative risk parameter estimates when the bank has limited relevant data, and any adjustments that are part of the quantification process must not result in a pattern of bias toward lower risk parameter estimates. This does not prohibit individual adjustments that result in lower estimates of risk parameters, as both upward and downward adjustments are expected. Individual adjustments are less important than broad patterns; consistent signs of judgmental decisions that materially lower risk parameter estimates may be evidence of systematic bias, which is not permitted.

In estimating relevant risk parameters, banks should not rely on the possibility of U.S. government financial assistance, except for the financial assistance that the U.S. government has a legally binding commitment to provide.

4. Optional Approaches That Require Prior Supervisory Approval

A bank that intends to apply the internal models methodology to counterparty credit risk, the double default treatment for credit risk mitigation, the IAA for securitization exposures to ABCP programs, or the IMA to equity exposures must receive prior written approval from its primary Federal supervisor. The criteria on which approval will be based are described in the respective sections below.

5. Operational Risk

A bank must have operational risk management processes, data and assessment systems, and quantification systems that meet the qualification requirements in section 22(h) of the final rule. A bank must have an operational risk management function that is independent of business line management. The operational risk management function is responsible for the design, implementation, and oversight of the bank's operational risk data and assessment systems, operational risk quantification systems, and related processes. The roles and responsibilities of the operational risk management function may vary between banks, but should be clearly documented. The operational risk management function should have an organizational stature commensurate with the bank's operational risk profile. At a minimum, the bank's operational risk management function should ensure the development of policies and procedures for the explicit management of operational risk as a distinct risk to the bank's safety and soundness.

A bank also must establish and document a process to identify, measure, monitor, and control operational risk in bank products, activities, processes, and systems. This process should provide for the consistent and comprehensive collection of the data needed to estimate the bank's exposure to operational risk. This process must capture business environment and internal control factors affecting the bank's operational risk profile. The process must also ensure reporting of operational risk exposures, operational loss events, and other relevant operational risk information to business unit management, senior management, and to the board of directors (or a designated committee of the board).

The final rule defines an operational loss event as an event that results in loss and is associated with any of the seven operational loss event type categories. Under the final rule, the agencies have included definitions of the seven operational loss event type categories, consistent with the descriptions outlined in the New Accord. The seven operational loss event type categories are: (i) Internal fraud, which is the operational loss event type category that comprises operational losses resulting from an act involving at least one internal party of a type intended to defraud, misappropriate property or circumvent regulations, the law or company policy, excluding diversity and discrimination-type events; (ii) external fraud, which is the operational loss event type category that comprises operational losses resulting from an act by a third party of a type intended to defraud, misappropriate property or circumvent the law; [35] (iii) employment practices and workplace safety, which is the operational loss event type category that comprises operational losses resulting from an act inconsistent with employment, health, or safety laws or agreements, payment of personal injury claims, or payment arising from diversity or discrimination events; (iv) clients, products, and business practices, which is the operational loss event type category that comprises operational losses resulting from the nature or design of a product or from an unintentional or negligent failure to meet a professional obligation to specific clients (including fiduciary and suitability requirements); (v) damage to physical assets, which is the operational loss event type category that comprises operational losses resulting from the loss of or damage to physical assets from natural disaster or other events; (vi) business disruption and system failures, which is the operational loss event type category that comprises operational losses resulting from disruption of business or system failures; and (vii) execution, delivery, and process management, which is the operational loss event type category that comprises operational losses resulting from failed transaction processing or process management or losses arising from

[35] Retail credit card losses arising from non-contractual, third-party initiated fraud (for example, identity theft) are external fraud operational losses. All other third-party initiated credit losses are to be treated as credit risk losses.

relations with trade counterparties and vendors.

The final rule does not require a bank to capture internal operational loss event data according to these categories. However, unlike the proposed rule, the final rule requires that a bank must be able to map such data into the seven operational loss event type categories. The agencies believe such mapping will promote reporting consistency and comparability across banks and is consistent with expectations in the New Accord.[36]

A bank's operational risk management processes should reflect the scope and complexity of its business lines, as well as its corporate organizational structure. Each bank's operational risk profile is unique and should have a tailored risk management approach appropriate for the scale and materiality of the operational risks present in the bank.

Operational Risk Data and Assessment System

A bank must have an operational risk data and assessment system that incorporates on an ongoing basis the following four elements: internal operational loss event data, external operational loss event data, results of scenario analysis, and assessments of the bank's business environment and internal controls. These four operational risk elements should aid the bank in identifying the level and trend of operational risk, determining the effectiveness of operational risk management and control efforts, highlighting opportunities to better mitigate operational risk, and assessing operational risk on a forward-looking basis. A bank's operational risk data and assessment system must be structured in a manner consistent with the bank's current business activities, risk profile, technological processes, and risk management processes.

The proposed rule defined operational loss as a loss (excluding insurance or tax effects) resulting from an operational loss event. Operational losses included all expenses associated with an operational loss event except for opportunity costs, forgone revenue, and costs related to risk management and control enhancements implemented to prevent future operational losses. The definition of operational loss is an important issue, as it is a critical building block in a bank's calculation of its operational risk capital requirement under the AMA. More specifically, the bank's estimate of operational risk exposure—the basis for determining a bank's risk-weighted asset amount for operational risk—is an estimate of aggregate operational losses generated by the bank's AMA process.

Many commenters supported the agencies' proposed definition of operational loss and viewed it as appropriate and consistent with general use within the banking industry. Some commenters, however, opposed the inclusion of a specific definition of operational loss and asserted that the proposed treatment of operational loss is too prescriptive. In addition, some commenters maintained that including a definition of operational loss is inconsistent with the New Accord, which does not explicitly define operational loss. In response to a specific question in the proposal, many commenters asserted that the definition of operational loss should relate to its impact on regulatory capital rather than economic capital concepts. One commenter, however, recommended using the replacement cost of any fixed asset affected by an operational loss event to reflect the actual financial impact of the event.

Because operational losses are the building blocks in a bank's calculation of its operational risk capital requirement under the AMA, the agencies continue to believe that it is necessary to define what is meant by operational loss to achieve comparability and foster consistency both across banks and across business lines within a bank. Additionally, the agencies agree with those commenters who asserted that the definition of operational loss should relate to its impact on regulatory capital. Therefore, the agencies have adopted the proposed definition of operational loss unchanged.

In the preamble to the proposed rule, the agencies recognized that there was a potential to double-count all or a portion of the risk-based capital requirement associated with fixed assets. Under the proposed rule, the credit-risk-weighted asset amount for a bank's premises would equal the carrying value of the premises on the financial statements of the bank, determined in accordance with GAAP. A bank's operational risk exposure estimate addressing bank premises generally would be different than, and in addition to, the risk-based capital requirement generated under the proposed rule and could, at least in part, address the same risk exposure. The majority of commenters on this issue recommended removing the credit risk capital requirement for premises and other fixed assets and preserving only the operational risk capital requirement.

The agencies are maintaining the proposed rule's treatment of fixed assets in the final rule. The New Accord generally provides a risk weight of 100 percent for assets for which an IRB treatment is not specified.[37] Consistent with the New Accord, the final rule provides that the risk-weighted asset amount for any on-balance sheet asset that does not meet the definition of a wholesale, retail, securitization, or equity exposure is equal to the carrying value of the asset. Also consistent with the New Accord, the final rule continues to include damage to physical assets among the operational loss event types incorporated into a bank's operational risk exposure estimate.[38] The agencies believe that requiring a bank to calculate both a credit risk and operational risk capital requirement for premises and fixed assets is justified in light of the fact that the credit risk capital requirement covers a broader set of risks, whereas the operational risk capital requirement covers potential physical damage to the asset. The agencies view this treatment of premises and other fixed assets as consistent with the New Accord and have confirmed that the approach is consistent with the approaches used by other jurisdictions implementing the New Accord.

A bank must have a systematic process for capturing and using internal operational loss event data in its operational risk data and assessment systems. The final rule defines a bank's internal operational loss event data as its gross operational loss amounts, dates, recoveries, and relevant causal information for operational loss events occurring at the bank. Under the proposed rule, a bank's operational risk data and assessment system would include a minimum historical observation period of five years of internal operational losses. With approval of its primary Federal supervisor, however, a bank could use a shorter historical observation period to address transitional situations such as integrating a new business line. A bank also could refrain from collecting internal operational loss event data for individual operational losses below established dollar threshold amounts if the bank could demonstrate to the satisfaction of its primary Federal supervisor that the thresholds were reasonable, did not exclude important internal operational loss event data, and permitted the bank to capture substantially all the dollar value of the bank's operational losses.

---

[36] New Accord, ¶ 673.

[37] New Accord, ¶ 214.

[38] New Accord, Annex 9.

Several commenters expressed concern over the proposal's five-year minimum historical observation period requirement for internal operational loss event data. These commenters recommended that the agencies align this provision with the New Accord, which allows for a three-year historical observation period upon initial AMA implementation.

While the proposed rule required a bank to include in its operational risk data and assessment systems a historical observation period of at least five years for internal operational loss event data, it also provided for a shorter observation period subject to agency approval to address transitional situations, such as integrating a new business line. The agencies believe that these proposed provisions provide sufficient flexibility to consider other situations, on a case-by-case basis, in which a shorter observation period may be appropriate, such as a bank's initial implementation of an AMA. Therefore, the final rule retains the five-year historical observation period requirements and the transitional flexibility for internal operational loss event data, as proposed.

In relation to the provision that permits a bank to refrain from collecting internal operational loss event data below established thresholds, a few commenters sought clarification of the proposed requirement that the thresholds must permit the bank to capture "substantially all" of the dollar value of a bank's operational losses. In particular, they questioned whether a bank must collect all or a very high percentage of operational losses or whether smaller losses could be modeled.

To demonstrate the appropriateness of its threshold for internal operational loss event data collection, a bank might choose to collect all internal operational loss event data, at least for a time, to support a meaningful analysis around the appropriateness of its chosen data collection threshold. Alternatively, a bank might be able to obtain data from systems outside of its operational risk data and assessment system (for example, the bank's general ledger system) to demonstrate the impact of choosing different thresholds on its operational risk exposure estimates.

With respect to the commenters' question regarding modeling smaller losses, the agencies would consider permitting such an approach based on whether the approach meets the overall qualification requirements outlined in the final rule. In particular, the agencies would consider whether the bank satisfies those requirements pertaining to a bank's operational risk quantification system as well as its control, oversight, and validation mechanisms. Such modeling considerations, however, would not eliminate the requirement for a bank to demonstrate the appropriateness of any established internal operational loss event data collection thresholds.

A bank also must establish a systematic process to determine its methodologies for incorporating external operational loss event data into its operational risk data and assessment systems. The proposed and final rules define external operational loss event data for a bank as gross operational loss amounts, dates, recoveries, and relevant causal information for operational loss events occurring at organizations other than the bank. External operational loss event data may serve a number of different purposes in a bank's operational risk data and assessment systems. For example, external operational loss event data may be a particularly useful input in determining a bank's level of exposure to operational risk when internal operational loss event data are limited. In addition, external operational loss event data provide a means for the bank to understand industry experience and, in turn, provide a means for the bank to assess the adequacy of its internal operational loss event data.

While internal and external operational loss event data provide a historical perspective on operational risk, it is also important that a bank incorporate forward-looking elements into its operational risk data and assessment systems. Accordingly, under the final rule, as under the proposed rule, a bank must incorporate business environment and internal control factors into its operational risk data and assessment systems to assess fully its exposure to operational risk. In principle, a bank with strong internal controls in a stable business environment would have less exposure to operational risk than a bank with internal control weaknesses that is growing rapidly or introducing new products. In this regard, a bank should identify and assess the level and trends in operational risk and related control structures at the bank. These assessments should be current and comprehensive across the bank, and they should identify the operational risks facing the bank. The framework established by a bank to maintain these risk assessments should be sufficiently flexible to accommodate increasing complexity, new activities, changes in internal control systems, and an increasing volume of information. A bank must also periodically compare the results of its prior business environment and internal control factor assessments against the bank's actual operational losses incurred in the intervening period.

A few commenters sought clarification on the agencies' expectations regarding a bank's periodic comparisons of its prior business environment and internal control factor assessments against its actual operational losses. One commenter expressed concern over the difficulty of conducting an empirically robust analysis to fulfill the requirement.

Under the final rule, a bank has flexibility in the approach it uses to conduct its business environment and internal control factor assessments. As such, the methods for conducting comparisons of these assessments against actual operational loss experience may also vary and precise modeling calibration may not be practical. The agencies maintain, however, that it is important for a bank to perform such comparisons to ensure that its assessments are current, reasonable, and appropriately factored into the bank's AMA framework. In addition, the comparisons could highlight the need for potential adjustments to the bank's operational risk management processes.

A bank also must have a systematic process for determining its methodologies for incorporating scenario analysis into its operational risk data and assessment systems. As an input to a bank's operational risk data and assessment systems, scenario analysis is especially relevant for business lines or operational loss event types where internal data, external data, and assessments of the business environment and internal control factors do not provide a sufficiently robust estimate of the bank's exposure to operational risk.

Similar to business environment and internal control factor assessments, the results of scenario analysis provide a means for a bank to incorporate a forward-looking element into its operational risk data and assessment systems. Under the proposed rule, scenario analysis was defined as a systematic process of obtaining expert opinions from business managers and risk management experts to derive reasoned assessments of the likelihood and loss impact of plausible high-severity operational losses. The agencies have clarified this definition in the final rule to recognize that there are various methods and inputs a bank may use to conduct its scenario analysis. For this reason, the modified definition indicates that scenario analysis may include the well-reasoned evaluation and use of external operational loss event data, adjusted as appropriate to ensure relevance to a bank's operational risk profile and control structure.

A bank's operational risk data and assessment systems must include credible, transparent, systematic, and verifiable processes that incorporate all four operational risk elements (that is, internal operational loss event data, external operational loss event data, scenario analysis, and business environment and internal control factors). The bank should have clear standards for the collection and modification of all elements. The bank should combine these four elements in a manner that most effectively enables it to quantify its exposure to operational risk.

Operational Risk Quantification System

A bank must have an operational risk quantification system that generates estimates of its operational risk exposure using its operational risk data and assessment systems. The final rule defines operational risk exposure as the 99.9th percentile of the distribution of potential aggregate operational losses, as generated by the bank's operational risk quantification system over a one-year horizon (and not incorporating eligible operational risk offsets or qualifying operational risk mitigants). The mean of such a total loss distribution is the bank's EOL. The final rule defines EOL as the expected value of the distribution of potential aggregate operational losses, as generated by the bank's operational risk quantification system using a one-year horizon. The bank's UOL is the difference between the bank's operational risk exposure and the bank's EOL.

A few commenters sought clarification on whether the agencies would impose specific requirements around the use and weighting of the four elements of a bank's operational risk data and assessment system, and whether there were any limitations on how external data or scenario analysis could be used as modeling inputs. Another commenter expressed concern that for some U.S.-chartered DIs that were subsidiaries of foreign banking organizations, it might be difficult to ever have enough internal operational loss event data to generate statistically significant operational risk exposure estimates.

The agencies recognize that banks will have different inputs and methodologies for estimating their operational risk exposure given the inherent flexibility of the AMA. It follows that the weights assigned in combining the four required elements of a bank's operational risk data and assessment system (internal operational loss event data, external operational loss event data, scenario analysis, and assessments of the bank's business environment and internal control factors) will also vary across banks. Factors affecting the weighting include a bank's operational risk profile, operational loss experience, internal control environment, and relative quality and content of the four elements. These factors will influence the emphasis placed on certain elements relative to others. As such, the agencies are not prescribing specific requirements around the weighting of each element, nor are they placing any specific limitations on the use of the elements. In view of this flexibility, however, under the final rule a bank's operational risk quantification systems must include a credible, transparent, systematic, and verifiable approach for weighting the use of the four elements.

As part of its operational risk exposure estimate, a bank must use a unit of measure that is appropriate for the bank's range of business activities and the variety of operational loss events to which it is exposed. The proposed rule defined a unit of measure as the level (for example, organizational unit or operational loss event type) at which the bank's operational risk quantification system generated a separate distribution of potential operational losses. Under the proposed rule, a bank could not combine business activities or operational loss events with different risk profiles within the same loss distribution.

Many commenters expressed concern that the prohibition against combining business activities or operational loss events with different risk profiles within the same loss distribution was an impractical standard because some level of combination was unavoidable. Additionally, commenters noted that data limitations made it difficult to quantify risk profiles at a granular level. Commenters also expressed concern that the proposed rule appeared to preclude the use of ''top-down'' approaches, given that under a firm-wide approach business activities or operational loss events with different risk profiles would necessarily be combined within the same loss distribution. One commenter suggested that, because of data limitations and the potential for wide variations in risk profiles within individual business lines and/or types of operational loss events, banks be afforded some latitude in moving from a ''top-down'' approach to a ''bottom-up'' approach.

The agencies have retained the proposed definition of unit of measure in the final rule. The agencies recognize, however, that there is a need for flexibility in assessing whether a bank's chosen unit of measure is appropriate for the bank's range of business activities and the variety of operational loss events to which it is exposed. In some instances, data limitations may indeed prevent a bank's operational risk quantification systems from generating a separate distribution of potential operational losses for certain business lines or operational loss event types. Therefore, the agencies have modified the final rule to provide a bank more flexibility in devising an appropriate unit of measure. Specifically, a bank must employ a unit of measure that is appropriate for its range of business activities and the variety of operational loss events to which it is exposed, and that does not combine business activities or operational loss events with demonstrably different risk profiles within the same loss distribution.

The agencies recognize that operational losses across operational loss event types and business lines may be related. Under the final rule, as under the proposed rule, a bank may use its internal estimates of dependence among operational losses within and across business lines and operational loss event types if the bank can demonstrate to the satisfaction of its primary Federal supervisor that its process for estimating dependence is sound, robust to a variety of scenarios, implemented with integrity, and allows for the uncertainty surrounding the estimates. The agencies expect that a bank's assumptions regarding dependence will be conservative given the uncertainties surrounding dependence modeling for operational risk. If a bank does not satisfy the requirements surrounding dependence, the bank must sum operational risk exposure estimates across units of measure to calculate its total operational risk exposure.

Under the proposed rule, dependence was defined as ''a measure of the association among operational losses across and within business lines and operational loss event types.'' One commenter recommended that the agencies revise the definition of dependence to ''a measure of the association among operational losses across and within units of measure.'' The agencies recognize that examples of units of measure include, but are not limited to, business lines and operational loss event types, and that a bank's operational risk quantification system could generate distributions of potential operational losses that are separate from its business lines and operational loss event types. Units of measure can also encompass correlations over time. Therefore, the agencies have amended the final rule to define dependence as a measure of the association among operational losses across and within units of measure.

As noted above, under the proposed rule, a bank that did not satisfy the requirements surrounding dependence would sum operational risk exposure estimates across units of measure to calculate its total operational risk exposure. Several commenters asserted that the New Accord does not require a bank to sum its operational risk exposure estimates across units of measure if the bank cannot demonstrate adequate support of its dependence assumptions. One commenter asked the agencies to remove this requirement from the final rule. Several commenters suggested that if a bank cannot provide sufficient support for its dependence estimates, a conservative assumption of positive dependence is warranted, but not an assumption of perfect positive dependence as implied by the summation requirement. Another commenter suggested that the dependence assumption should be based upon a conservative statistical analysis of industry data.

The New Accord states that, absent a satisfactory demonstration of a bank's ''systems for determining correlations'' to its national supervisor, ''risk measures for different operational risk estimates must be added for purposes of calculating the regulatory minimum capital requirement.'' [39] The agencies continue to believe that this treatment of operational risk exposure estimates across units of measure is prudent until the relationships among operational losses are better understood. Therefore, the final rule retains the proposed rule's requirement regarding the summation of operational risk exposure estimates.

Several commenters believed that a bank should be permitted to demonstrate the nature of the relationship between the causes of different operational losses based on any available informative empirical evidence. These commenters suggested that such evidence could be statistical or anecdotal, and could be based on information ranging from established statistical techniques to more general mathematical approaches to clear logical arguments about the degree to which risks and losses are related, or the similarity of circumstance between the bank and a peer group for which acceptable estimates of dependency are available.

The agencies recognize that there may be different ways to estimate the relationship among operational losses across and within units of measure. Therefore, under the final rule, a bank has flexibility to use different methodologies to demonstrate dependence across units of measure. However, the bank must demonstrate to the satisfaction of its primary Federal supervisor that its process for estimating dependence is sound, robust to a variety of scenarios, implemented with integrity, and allows for the uncertainty surrounding the estimates.

A bank's chosen unit of measure affects how it should account for dependence. Explicit assumptions regarding dependence across units of measure are always necessary to estimate operational risk exposure at the bank level. However, explicit assumptions regarding dependence within units of measure are not necessary, and under many circumstances models assume statistical independence within each unit of measure. The use of only a few units of measure increases the need to ensure that dependence within units of measure is suitably reflected in the operational risk exposure estimate.

In addition, the bank's process for estimating dependence should provide for ongoing monitoring, recognizing that dependence estimates can change. The agencies expect that a bank's approach for developing explicit and objective dependence determinations will improve over time. As such, the bank should develop a process for assessing incremental improvements to the approach (for example, through out-of-sample testing).

Under the final rule, as under the proposed rule, a bank must review and update (as appropriate) its operational risk quantification system whenever the bank becomes aware of information that may have a material effect on the bank's estimate of operational risk exposure, but no less frequently than annually.

The agencies recognize that, in limited circumstances, there may not be sufficient data available for a bank to generate a credible estimate of its own operational risk exposure at the 99.9 percent confidence level. In these limited circumstances, under the proposed rule, a bank could use an alternative operational risk quantification system, subject to prior approval by the bank's primary Federal supervisor. The alternative approach was not available at the BHC level.

One commenter asserted that, in line with the New Accord's continuum of operational risk measurement approaches, all banks, including BHCs, should be permitted to adopt an alternative operational risk quantification system, such as the New Accord's standardized approach or allocation approach. The commenter further noted that a bank's use of an allocation approach should not be subject to more stringent terms and conditions than those set forth in the New Accord.

The agencies are maintaining the alternative approach provision in the final rule. The agencies are not prescribing specific estimation methodologies under this approach and expect use of an alternative approach to occur on a very limited basis. A bank proposing to use an alternative operational risk quantification system must submit a proposal to its primary Federal supervisor. In evaluating a bank's proposal, the primary Federal supervisor will review the bank's justification for requesting use of an alternative approach in light of the bank's size, complexity, and risk profile. The bank's primary Federal supervisor will also consider whether the estimate of operational risk under the alternative approach is appropriate (for example, whether the estimate results in capital levels that are commensurate with the bank's operational risk profile and is sensitive to changes in the bank's risk profile) and can be supported empirically. Furthermore, the agencies expect a bank using an alternative operational risk quantification system to adhere to the rule's qualification requirements, including establishment and use of operational risk management processes and data and assessment systems. As under the proposed rule, the alternative approach is not available at the BHC level.

A bank proposing an alternative approach to operational risk based on an allocation methodology should be aware of certain limitations associated with the use of such an approach. Specifically, the agencies will not permit a DI to accept an allocation of operational risk capital requirements that includes non-DIs. Unlike the cross-guarantee provision of the Federal Deposit Insurance Act, which provides that a DI is liable for any losses incurred by the FDIC in connection with the failure of a commonly-controlled DI, there are no statutory provisions requiring cross-guarantees between a DI and its non-DI affiliates. [40] Furthermore, depositors and creditors of a DI generally have no legal recourse to

[39] New Accord, ¶669.

[40] 12 U.S.C. 1815(e).

capital funds that are not held by the DI or its affiliate DIs.

6. Data Management and Maintenance

A bank must have data management and maintenance systems that adequately support all aspects of the bank's advanced IRB systems, operational risk management processes, operational risk data and assessment systems, operational risk quantification systems, and, to the extent the bank uses the following systems, the internal models methodology, the double default excessive correlation detection process, the IMA for equity exposures, and the IAA for securitization exposures to ABCP programs (collectively, advanced systems).

The bank's data management and maintenance systems must adequately support the timely and accurate reporting of risk-based capital requirements. Specifically, a bank must retain sufficient data elements related to key risk drivers to permit monitoring, validation, and refinement of the bank's advanced systems. A bank's data management and maintenance systems should generally support the rule's qualification requirements relating to quantification, validation, and control and oversight mechanisms, as well as the bank's broader risk management and reporting needs. The precise data elements to be collected are dictated by the features and methodologies of the risk measurement and management systems employed by the bank. To meet the significant data management challenges presented by the quantification, validation, and control and oversight requirements of the advanced approaches, a bank must retain data in an electronic format that allows timely retrieval for analysis, reporting, and disclosure purposes. The agencies did not receive any material comments on these data management requirements.

7. Control and Oversight Mechanisms

The consequences of an inaccurate or unreliable advanced system can be significant, particularly regarding the calculation of risk-based capital requirements. Accordingly, bank senior management is responsible for ensuring that all advanced systems function effectively and comply with the qualification requirements.

Under the proposed rule, a bank's board of directors (or a designated committee of the board) would at least annually evaluate the effectiveness of, and approve, the bank's advanced systems. Multiple commenters objected to this requirement. Commenters suggested that a bank's board of directors should have more narrowly defined responsibilities, and that evaluation of a bank's advanced systems would be more effectively and appropriately accomplished by senior management.

The agencies believe that a bank's board of directors has ultimate accountability for the effectiveness of the bank's advanced systems. However, the agencies agree that it is not necessarily the responsibility of a bank's board of directors to conduct an evaluation of the effectiveness of a bank's advanced systems. Evaluation may include transaction testing, validation, and audit activities more appropriately the responsibility of senior management. Accordingly, the final rule requires a bank's board of directors to review the effectiveness of, and approve, the bank's advanced systems at least annually.

To support senior management's and the board of directors'' oversight responsibilities, a bank must have an effective system of controls and oversight that ensures ongoing compliance with the qualification requirements; maintains the integrity, reliability, and accuracy of the bank's advanced systems; and includes adequate corporate governance and project management processes. Banks have flexibility to determine how to achieve integrity in their risk management systems. Banks are, however, expected to follow standard control principles in their systems such as checks and balances, separation of duties, appropriateness of incentives, and data integrity assurance, including that of information purchased from third parties. Moreover, the oversight process should be sufficiently independent of the advanced systems'' development, implementation, and operation to ensure the integrity of the component systems. The objective of risk management system oversight is to ensure that the various systems used in determining risk-based capital requirements are operating as intended. The oversight process should draw conclusions on the soundness of the components of the risk management system, identify errors and flaws, and recommend corrective action as appropriate.

Validation

A bank must validate its advanced systems on an ongoing basis. Validation is the set of activities designed to give the greatest possible assurances of accuracy of the advanced systems. Validation includes three broad components: (i) Evaluation of the conceptual soundness of the advanced systems; (ii) ongoing monitoring that includes process verification and comparison of the bank's internal estimates with relevant internal and external data sources or results from other estimation techniques (benchmarking); and (iii) outcomes analysis that includes back-testing.

Each of these three components of validation must be applied to the bank's risk rating and segmentation systems, risk parameter quantification processes, and internal models that are part of the bank's advanced systems. A sound validation process should take business cycles into account, and any adjustments for stages of the economic cycle should be clearly specified in advance and fully documented as part of the validation policy. Senior management of the bank should be notified of the validation results and should take corrective action where appropriate.

A bank's validation process must be independent of the advanced systems' development, implementation, and operation, or be subject to independent assessment of its adequacy and effectiveness. A bank should ensure that individuals who perform the review are not biased in their assessment due to their involvement in the development, implementation, or operation of the processes or products. For example, reviews of the internal risk rating and segmentation systems should be performed by individuals who were not part of the development, implementation, or maintenance of those systems. In addition, individuals performing the reviews should possess the requisite technical skills and expertise to fulfill their mandate.

The first component of validation is evaluating conceptual soundness, which involves assessing the quality of the design and construction of a risk measurement or management system. This evaluation of conceptual soundness should include documentation and empirical evidence supporting the methods used and the variables selected in the design and quantification of the bank's advanced systems. The documentation should also evidence an understanding of the systems' limitations. The development of internal risk rating and segmentation systems and their quantification processes requires banks to exercise judgment. Validation should ensure that these judgments are well informed and considered, and generally include a body of expert opinion. A bank should review developmental evidence whenever the bank makes material changes in its advanced systems.

The second component of the validation process for a bank's advanced systems is ongoing monitoring to confirm that the systems were implemented appropriately and continue to perform as intended. Such monitoring involves process verification and benchmarking. Process verification includes verifying that internal and external data are accurate and complete, as well as ensuring that: Internal risk rating and segmentation systems are being used, monitored, and updated as designed; ratings are assigned to wholesale obligors and exposures as intended; and appropriate remediation is undertaken if deficiencies exist.

Benchmarking means the comparison of a bank's internal estimates with relevant internal and external data or with estimates based on other estimation techniques. Banks are required to use alternative data sources or risk assessment approaches to draw inferences about the validity of their internal risk ratings, segmentations, risk parameter estimates, and model outputs on an ongoing basis. For credit risk ratings, examples of alternative data sources include independent internal raters (such as loan review), external rating agencies, wholesale and retail credit risk models developed independently, or retail credit bureau models. Because it may take considerable time before outcomes with which to conduct sufficiently robust backtesting are available, benchmarking will be a very important validation device. Benchmarking applies to all quantification processes and internal risk rating and segmentation activities.

Benchmarking allows a bank to compare its estimates with those of other estimation techniques and data sources. Results of benchmarking exercises can be a valuable diagnostic tool in identifying potential weaknesses in a bank's risk quantification system. While benchmarking activities allow for inferences about the appropriateness of the quantification processes and internal risk rating and segmentation systems, they are not the same as backtesting. Differences observed between the bank's risk estimates and the benchmark do not necessarily indicate that the internal risk ratings, segmentation decisions, or risk parameter estimates are in error. The benchmark itself is an alternative prediction, and the difference may be due to different data or methods. As part of the benchmarking exercise, the bank should investigate the source of the differences and whether the extent of the differences is appropriate.

The third component of the validation process is outcomes analysis, which is the comparison of the bank's forecasts of risk parameters and other model outputs with actual outcomes. A bank's outcomes analysis must include backtesting, which is the comparison of the bank's forecasts generated by its internal models with actual outcomes during a sample period not used in model development. In this context, backtesting is one form of out-of-sample testing. The agencies note that in other contexts backtesting may refer to in-sample fit, but in-sample fit analysis is not what the rule requires a bank to do as part of the advanced approaches validation process.

Actual outcomes should be compared with expected ranges around the estimated values of the risk parameters and model results. Randomness and many other variables will make discrepancies between realized outcomes and the estimated risk parameters inevitable. Therefore the expected ranges should take into account relevant elements of a bank's internal risk rating or segmentation processes. For example, depending on the bank's rating philosophy, year-by-year realized default rates may be expected to differ significantly from the long-run one-year average. Also, changes in economic conditions between the historical data and current period can lead to differences between actual outcomes and estimates.

One commenter asserted that requiring a bank to perform a statistically robust form of backtesting would be an impractically high standard for AMA qualification given the nature of operational risk. The commenter further claimed that validating an operational risk model must rely on the robustness of the logical structure of the model and the appropriateness of the resultant operational risk exposure when benchmarked against other established reference points.

The agencies recognize that it may take considerable time before actual outcomes outside of the sample period used in model development are available that would allow a bank to backtest its operational risk models by comparing its internal estimates with these outcomes. The agencies also acknowledge that a bank may be unable to backtest an operational risk model with the same degree of statistical precision that it is able to backtest an internal market risk model. When a bank's backtesting process is not sufficiently robust, a bank may need to rely more heavily on benchmarking and other alternative validation devices. The agencies maintain, however, that backtesting provides important feedback on the accuracy of model outputs and that a bank should be able to assess how actual losses compare with estimates previously generated by its model.

Internal Audit

A bank must have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the bank's advanced systems. Internal audit should review the validation process, including validation procedures, responsibilities, results, timeliness, and responsiveness to findings. Further, internal audit should evaluate the depth, scope, and quality of the risk management system review process and conduct appropriate testing to ensure that the conclusions of these reviews are well founded. Internal audit must report its findings at least annually to the bank's board of directors (or a committee thereof).

Stress Testing

A bank must periodically stress test its advanced systems. Stress testing analysis is a means of understanding how economic cycles, especially downturns as described by stress scenarios, affect risk-based capital requirements, including migration across rating grades or segments and the credit risk mitigation benefits of double default treatment. Stress testing analysis consists of identifying stress scenarios and then assessing the effects of the scenarios on key performance measures, including risk-based capital requirements. Under the rule, changes in borrower credit quality will lead to changes in risk-based capital requirements. Because credit quality changes typically reflect changing economic conditions, risk-based capital requirements may also vary with the economic cycle. During an economic downturn, risk-based capital requirements will increase if wholesale obligors or retail exposures migrate toward lower credit quality rating grades or segments.

Supervisors expect banks to manage their regulatory capital position so that they remain at least adequately capitalized during all phases of the economic cycle. A bank that credibly estimates regulatory capital levels during a downturn can be more confident of appropriately managing regulatory capital.

Banks should use a range of plausible but severe scenarios and methods when stress testing to manage regulatory capital. Scenarios may be historical, hypothetical, or model-based. Key variables specified in a scenario may include, for example, interest rates, transition matrices (ratings and score-band segments), asset values, credit spreads, market liquidity, economic growth rates, inflation rates, exchange rates, or unemployment rates. A bank may choose to have scenarios apply to an entire portfolio, or it may identify scenarios specific to various sub-portfolios. The severity of the stress scenarios should be consistent with the periodic economic downturns experienced in the bank's market areas. Such scenarios may be less severe than those used for other purposes, such as testing a bank's solvency.

The scope of stress testing analysis should be broad and include all material portfolios. The time horizon of the analysis should be consistent with the specifics of the scenario and should be long enough to measure the material effects of the scenario on key performance measures. For example, if a scenario such as a historical recession has material income and segment or ratings migration effects over two years, the appropriate time horizon is at least two years.

8. Documentation

A bank must adequately document all material aspects of its advanced systems, including but not limited to the internal risk rating and segmentation systems, risk parameter quantification processes, model design, assumptions, and validation results. The guiding principle governing documentation is that it should support the requirements for the quantification, validation, and control and oversight mechanisms as well as the bank's broader risk management and reporting needs. Documentation is also critical to the supervisory oversight process.

The bank should document the rationale for all material assumptions underpinning its chosen analytical frameworks, including the choice of inputs, distributional assumptions, and weighting of quantitative and qualitative elements. The bank also should document and justify any subsequent changes to these assumptions.

C. Ongoing Qualification

A bank using the advanced approaches must meet the qualification requirements on an ongoing basis. Banks are expected to improve their advanced systems as they improve data gathering capabilities and as industry practice evolves. To facilitate the supervisory oversight of systems changes, a bank must notify its primary Federal supervisor when it makes a change to its advanced systems that results in a material change in the bank's risk-weighted asset amount for an exposure type, or when the bank makes any significant change to its modeling assumptions.

If an agency determines that a bank that uses the advanced approaches to calculate its risk-based capital requirements has fallen out of compliance with one or more of the qualification requirements, the agency will notify the bank of its failure to comply. After receiving such notice, a bank must establish and submit a plan satisfactory to its primary Federal supervisor to return to compliance. If the bank's primary Federal supervisor determines that the bank's risk-based capital requirements are not commensurate with the bank's credit, market, operational, or other risks, it may require the bank to calculate its risk-based capital requirements using the general risk-based capital rules or a modified form of the advanced approaches (for example, with fixed supervisory risk parameters).

Under the proposed rule, a bank that fell out of compliance with the qualification requirements would also be required to disclose publicly its noncompliance with the qualification requirements promptly after receiving notice of noncompliance from its primary Federal supervisor. Commenters objected to this requirement, noting that it is not one of the public disclosure requirements of the New Accord. The agencies have determined that the public disclosure of noncompliance is not always necessary, because the disclosure may not reflect the degree of noncompliance. Therefore, the agencies are not including a general noncompliance disclosure requirement in the final rule. However, the agencies acknowledge that a bank's significant noncompliance with the qualification requirements is an important factor in market participants' assessments of the bank's risk profile and, thus, a primary Federal supervisor may require public disclosure of noncompliance with the qualification requirements if such noncompliance is significant.

D. Merger and Acquisition Transition Provisions

Due to the advanced approaches' rigorous systems requirements, a bank that merges with or acquires another company might not be able to quickly integrate the merged or acquired company's exposures into its risk-based capital calculations. The proposed rule provided transition provisions that would allow the acquiring bank time to integrate the merged or acquired company into its advanced approaches, subject to an implementation plan submitted to the bank's primary Federal supervisor. As proposed, the transition provisions applied only to banks that had already qualified to use the advanced approaches. The agencies recognize, however, that a bank in the process of qualifying to use the advanced approaches may merge with or acquire a company and need time to integrate the company into its advanced approaches on an implementation schedule distinct from its original implementation plan. In the final rule, the agencies are therefore allowing banks to take advantage of the proposed rule's transition provisions for mergers and acquisitions both before and after they qualify to use the advanced approaches.

Under the proposed rule, a bank could use the transition provisions for the merged or acquired company's exposures for up to 24 months following the calendar quarter during which the merger or acquisition consummates. A bank's primary Federal supervisor could extend the transition period for up to an additional 12 months. Commenters generally supported this timeframe and associated supervisory flexibility. Therefore, the final rule adopts the proposed rule's merger and acquisition transition timeframe without change.

To take advantage of the merger and acquisition transition provisions, the acquiring bank must submit to its primary Federal supervisor an implementation plan for using the advanced approaches for the merged or acquired company. The proposed rule required a bank to submit such a plan within 30 days of consummating the merger or acquisition. Many commenters asserted that the 30-day timeframe for submission of an implementation plan may be too short, particularly given the many integration activities that must take place immediately following the consummation of a merger or acquisition. These commenters generally suggested that banks instead be given 90 or 180 days to submit the implementation plan. The agencies agree with these commenters that the proposed timeframe for submitting an implementation plan may be too short. Accordingly, the final rule requires a bank to submit an implementation plan within 90 days of the consummation of a merger or acquisition.

Under the final rule, if a bank that uses the advanced approaches to calculate risk-based capital requirements merges with or acquires a company that does not calculate risk-based capital requirements using the advanced approaches, the acquiring bank may use the general risk-based capital rules to compute the risk-weighted assets and associated capital for the merged or acquired company's exposures during the merger and acquisition transition timeframe. Any ALLL (net of allocated transfer risk reserves) associated with the acquired company's exposures may be included in the acquiring bank's tier 2 capital up to 1.25 percent of the acquired company's risk-weighted assets.[41] Such ALLL is excluded from the acquiring bank's eligible credit reserves. The risk-weighted assets of the acquired company are not included in the acquiring bank's credit-risk-weighted assets but are included in the acquiring bank's total risk-weighted assets. If the acquiring bank uses the general risk-based capital rules for acquired exposures, it must disclose publicly the amounts of risk-weighted assets and qualifying capital calculated under the general risk-based capital rules with respect to the acquired company and under this rule for the acquiring bank. The primary Federal supervisor of the bank will monitor the merger or acquisition to determine whether the acquiring bank's application of the general risk-based capital rules for the acquired company produces appropriate risk-based capital requirements for the assets of the acquired company in light of the overall risk profile of the acquiring bank.

Similarly, a core or opt-in bank that merges with or acquires another core or opt-in bank might not be able to apply its systems for the advanced approaches immediately to the acquired bank's exposures. Accordingly, the final rule permits a core or opt-in bank that merges with or acquires another core or opt-in bank to use the acquired bank's advanced approaches to determine the risk-weighted asset amounts for, and deductions from capital associated with, the acquired bank's exposures during the merger and acquisition transition timeframe.

A third potential merger or acquisition scenario is a bank subject to the general risk-based capital rules that merges with or acquires a bank that uses the advanced approaches. If, after the merger or acquisition, the acquiring bank is not a core bank, it could choose to opt in to the advanced approaches or to apply the general risk-based capital rules to the consolidated bank. If the acquiring bank chooses to remain on the general risk-based capital rules, the bank must immediately apply the general risk-based capital rules to all its exposures, including those of the acquired bank.

If the acquiring bank chooses or is required to move to the advanced approaches, however, it could apply the advanced approaches to the acquired exposures (provided that it continues to meet all of the qualification requirements for those exposures) for up to 24 months (with a potential 12-month extension) while it completes the process of qualifying to use the advanced approaches for the entire bank. If the acquiring bank has not begun implementing the advanced approaches at the time of the merger or acquisition, it may instead use the transition timeframes described in section III.A. of the preamble and section 21 of the final rule. In the latter case, the bank must consult with its primary Federal supervisor regarding the appropriate risk-based capital treatment of the acquired exposures. In no case may a bank permanently apply the advanced approaches only to an acquired bank's exposures and not to the consolidated bank.

Because eligible credit reserves and the ALLL are treated differently under the general risk-based capital rules and the advanced approaches, the final rule specifies how the acquiring bank must treat the general allowances associated with the merged or acquired company's exposures during the period when the general risk-based capital rules apply to the acquiring bank. Specifically, ALLL associated with the exposures of the merged or acquired company may not be directly included in the acquiring bank's tier 2 capital. Rather, any excess eligible credit reserves (that is, eligible credit reserves minus total expected credit losses) associated with the merged or acquired company's exposures may be included in the acquiring bank's tier 2 capital up to 0.6 percent of the credit-risk-weighted assets associated with those exposures.

IV. Calculation of Tier 1 Capital and Total Qualifying Capital

The final rule maintains the minimum risk-based capital ratio requirements of 4.0 percent tier 1 capital to total risk-weighted assets and 8.0 percent total qualifying capital to total risk-weighted assets. A bank's total qualifying capital is the sum of its tier 1 (core) capital elements and tier 2 (supplemental) capital elements, subject to various limits and restrictions, minus certain deductions (adjustments). The agencies are not restating the elements of tier 1 and tier 2 capital in the final rule. Those capital elements generally remain as they are currently in the general risk-based capital rules.[42] Consistent with the proposed rule, the final rule includes regulatory text for certain adjustments to the capital elements for purposes of the advanced approaches.

Under the final rule, consistent with the proposal, after identifying the elements of tier 1 and tier 2 capital, a bank must make certain adjustments to determine its tier 1 capital and total qualifying capital (the numerator of the total risk-based capital ratio). Some of these adjustments are made only to the tier 1 portion of the capital base. Other adjustments are made 50 percent from tier 1 capital and 50 percent from tier 2 capital.[43] A bank must still have at least 50 percent of its total qualifying capital in the form of tier 1 capital.[44]

Under the final rule, as under the proposal, a bank must deduct from tier 1 capital goodwill, other intangible assets, and deferred tax assets to the same extent that those assets are deducted from tier 1 capital under the general risk-based capital rules. Thus, all goodwill is deducted from tier 1 capital. Certain intangible assets—including mortgage servicing assets, non-mortgage servicing assets, and purchased credit card relationships—that meet the conditions and limits in the general risk-based capital rules do not have to be deducted from tier 1 capital. Likewise, deferred tax assets that are dependent upon future taxable income and that meet the valuation requirements and limits in the general risk-based capital rules do not have to be deducted from tier 1 capital.[45]

Under the general risk-based capital rules, a bank also must deduct from its

[41] Any amount of the acquired company's ALLL that was eliminated in accounting for the acquisition is not included in the acquiring bank's regulatory capital.

[42] *See* 12 CFR part 3, Appendix A, § 2 (national banks); 12 CFR part 208, Appendix A, § II (state member banks); 12 CFR part 225, Appendix A, § II (bank holding companies); 12 CFR part 325, Appendix A, § I (state nonmember banks); and 12 CFR 567.5 (savings associations).

[43] If the amount deductible from tier 2 capital exceeds the bank's actual tier 2 capital, however, the bank must deduct the shortfall amount from tier 1 capital.

[44] Any assets deducted from capital in computing the numerator of the risk-based capital ratios are also not included in risk-weighted assets in the denominator of the ratio.

[45] *See* 12 CFR part 3, Appendix A, § 2 (national banks); 12 CFR part 208, Appendix A, § II (state member banks); 12 CFR part 225, Appendix A, § II (bank holding companies); 12 CFR part 325, Appendix A, § I (state nonmember banks). OTS existing rules are formulated differently, but include similar deductions. Under OTS rules, for example, goodwill is included within the definition of ''intangible assets'' and is deducted from tier 1 (core) capital along with other intangible assets. *See* 12 CFR 567.1 and 567.5(a)(2)(i). Similarly, purchased credit card relationships and mortgage and non-mortgage servicing assets are included in capital to the same extent as the other agencies' rules. *See* 12 CFR 567.5(a)(2)(ii) and 567.12. The deduction of deferred tax assets is discussed in Thrift Bulletin 56.

tier 1 capital certain percentages of the adjusted carrying value of its nonfinancial equity investments. An advanced approaches bank is not required to make these deductions. Instead, the bank's equity exposures generally are subject to the equity treatment in part VI of the final rule and described in section V.F. of this preamble.[46]

A number of commenters urged the agencies to revisit the existing definitions of tier 1 and tier 2 capital, including some of the deductions. Some offered specific suggestions, such as removing the requirement to deduct goodwill from tier 1 capital or revising the limitations on certain capital instruments that may be included in regulatory capital. Other commenters noted that the definition of regulatory capital and related deductions should be thoroughly debated internationally before changes are made in any one national jurisdiction. The agencies believe that the definition of regulatory capital should be as consistent as possible across national jurisdictions. The BCBS has formed a working group that is currently looking at issues related to the definition of regulatory capital. Accordingly, the agencies have not modified the existing definition of regulatory capital and related deductions at this time, other than with respect to implementation of the advanced approaches.

Under the general risk-based capital rules, a bank is allowed to include in tier 2 capital its ALLL up to 1.25 percent of risk-weighted assets (net of certain deductions). Amounts of ALLL in excess of this limit are deducted from the gross amount of risk-weighted assets.

Under the proposed rule, the ALLL was treated differently. The proposed rule included a methodology for adjusting risk-based capital requirements based on a comparison of the bank's eligible credit reserves to its ECL. The proposed rule defined eligible credit reserves as all general allowances, including the ALLL, established through a charge against earnings to absorb credit losses associated with on-or off-balance sheet wholesale and retail exposures. As proposed, eligible credit reserves did not include allocated transfer risk reserves established pursuant to 12 U.S.C. 3904[47] and other specific reserves created against recognized losses. The final rule maintains the proposed definition of eligible credit reserves.

The proposed rule defined a bank's total ECL as the sum of ECL for all wholesale and retail exposures other than exposures to which the bank applied the double default treatment (described below). The bank's ECL for a wholesale exposure to a non-defaulted obligor or a non-defaulted retail segment was equal to the product of PD, ELGD, and EAD for the exposure or segment. The ECL for non-defaulted exposures thus reflected expected economic losses, including the cost of carry and direct and indirect workout expenses. The bank's ECL for a wholesale exposure to a defaulted obligor or a defaulted retail segment was equal to the bank's impairment estimate for allowance purposes for the exposure or segment. The ECL for defaulted exposures thus was based on accounting measures of credit loss incorporated into a bank's charge-off and reserving practices.

In the proposal, the agencies solicited comment on a possible alternative treatment for determining ECL for a defaulted exposure that would be more consistent with the proposed treatment of ECL for non-defaulted exposures. That alternative approach calculated ECL as the bank's current carrying value of the exposure multiplied by the bank's best estimate of the expected economic loss rate associated with the exposure (measured relative to the current carrying value). Commenters on this issue generally supported the proposed treatment and expressed some concern about the added complexity of the alternative treatment.

The agencies believe that, for defaulted exposures, any difference between a bank's best estimate of economic losses and its impairment estimate for ALLL purposes is likely to be small. The agencies also believe that the proposed ALLL impairment approach is less burdensome for banks than the ''best estimate of economic loss'' approach. As a result, the agencies are retaining this aspect of the proposed definition of ECL for defaulted exposures. The agencies recognize that this treatment requires a bank to specify how much of its ALLL is attributable to defaulted exposures, and emphasize that a bank must capture all material economic losses on defaulted exposures when building its databases for estimating LGDs for non-defaulted exposures.

The agencies also sought comment on the appropriate measure of ECL for assets held at fair value with gains and losses flowing through earnings. Commenters expressed the view that there should be no ECL for such assets because expected losses on such assets already have been removed from regulatory capital. The agencies agree with this position and, therefore, under the final rule, a bank may assign an ECL of zero to assets held at fair value with gains and losses flowing through earnings. The agencies are otherwise maintaining the proposed definition of ECL in the final rule, with the substitution of LGD for ELGD noted above.

Under the final rule, consistent with the proposal, a bank must compare the total dollar amount of its ECL to its eligible credit reserves. If there is a shortfall of eligible credit reserves compared to total ECL, the bank must deduct 50 percent of the shortfall from tier 1 capital and 50 percent from tier 2 capital. If eligible credit reserves exceed total ECL, the excess portion of eligible credit reserves may be included in tier 2 capital up to 0.6 percent of credit-risk-weighted assets.

A number of commenters objected to the 0.6 percent limit on inclusion of excess reserves in tier 2 capital and suggested that there should be a higher or no limit on the amount of excess reserves that may be included in regulatory capital. While the 0.6 percent limit is part of the New Accord, some commenters asserted that this limitation would put U.S. banks at a competitive disadvantage because U.S. accounting practices (as compared to accounting practices in many other countries) lead to higher reserves that are more likely to exceed the limitation. Another commenter asserted that the proposed limitation on excess reserves is more restrictive than the current cap on ALLL in the general risk-based capital rules. Finally, several commenters suggested that because ALLL is the first buffer against credit losses, it should be included without limit in tier 1 capital.

The agencies believe that the proposed 0.6 percent limit on inclusion of excess reserves in tier 2 capital is roughly equivalent to the 1.25 percent cap in the general risk-based capital rules and serves to maintain general consistency in the treatment of reserves

[46] By contrast, OTS rules require the deduction of equity investments from total capital. 12 CFR 567.5(c)(2)(ii). ''Equity investments'' are defined to include (i) investments in equity securities (other than investments in subsidiaries, equity investments that are permissible for national banks, indirect ownership interests in certain pools of assets (for example, mutual funds), Federal Home Loan Bank stock and Federal Reserve Bank stock); and (ii) investments in certain real property. 12 CFR 567.1. Savings associations applying the final rule are not required to deduct investments in equity securities. Instead, such investments are subject to the equity treatment in part VI of the final rule. Equity investments in real estate continue to be deducted to the same extent as under the general risk-based capital rules.

[47] 12 U.S.C. 3904 does not apply to savings associations regulated by the OTS. As a result, the OTS final rule does not refer to allocated transfer risk reserves.

domestically and internationally. Accordingly, the agencies have included the 0.6 percent cap in the final rule.

Under the proposed rule, a bank would deduct from tier 1 capital any after-tax gain-on-sale. Gain-on-sale was defined as an increase in a bank's equity capital that resulted from a securitization, other than an increase in equity capital that resulted from the bank's receipt of cash in connection with the securitization. The agencies designed this deduction to offset accounting treatments that produce an increase in a bank's equity capital and tier 1 capital at the inception of a securitization—for example, a gain attributable to a CEIO that results from Financial Accounting Standard (FAS) 140 accounting treatment for the sale of underlying exposures to a securitization special purpose entity (SPE). Over time, as the bank, from an accounting perspective, realizes the increase in equity capital and tier 1 capital booked at the inception of the securitization through actual receipt of cash flows, the amount of the required deduction would shrink accordingly.

Under the general risk-based capital rules,[48] a bank must deduct CEIOs, whether purchased or retained, from tier 1 capital to the extent that the CEIOs exceed 25 percent of the bank's tier 1 capital. Under the proposed rule, a bank would deduct CEIOs from tier 1 capital to the extent they represent gain-on-sale, and would deduct any remaining CEIOs 50 percent from tier 1 capital and 50 percent from tier 2 capital.

Under the proposed rule, certain other securitization exposures also would be deducted from tier 1 and tier 2 capital. These exposures included, for example, securitization exposures with an applicable external rating (defined below) that is more than one category below investment grade (for example, below BB-) and most subordinated unrated securitization exposures. When a bank deducted a securitization exposure (other than gain-on-sale) from regulatory capital, the bank would take the deduction 50 percent from tier 1 capital and 50 percent from tier 2 capital. Moreover, under the proposal, a bank could calculate any deductions from tier 1 and tier 2 capital with respect to a securitization exposure (including after-tax gain-on-sale) net of any deferred tax liabilities associated with the exposure.

[48] *See* 12 CFR part 3, Appendix A, § 2(c)(4) (national banks); 12 CFR part 208, Appendix A, § I.B.1.c. (state member banks); 12 CFR part 225, Appendix A, § I.B.1.c. (bank holding companies); 12 CFR part 325, Appendix A, § I.B.5. (state nonmember banks); 12 CFR 567.5(a)(2)(iii) and 567.12(d)(2) (savings associations).

The agencies received a number of comments on the proposed securitization-linked deductions. In particular, some commenters urged the agencies to retain the general risk-based capital rule for deducting only CEIOs that exceed 25 percent of tier 1 capital. Some of these commenters noted that the ''harsher'' securitization-linked deductions under the advanced approaches could have a significant tier 1 capital impact and, accordingly, could have an unwarranted effect on a bank's tier 1 leverage ratio calculation. A few commenters encouraged the agencies to permit a bank to replace the deduction approach for certain securitization exposures with a 1,250 percent risk weight approach, in part to mitigate potential tier 1 leverage ratio effects.

The agencies are retaining the securitization-related deductions as proposed. The proposed deductions are part of the New Accord's securitization framework. The agencies believe that they should be retained to foster consistency among participants in the international securitization markets.

The proposed rule also required a bank to deduct the bank's exposure on certain unsettled and failed capital markets transactions 50 percent from tier 1 capital and 50 percent from tier 2 capital. The agencies are retaining this deduction as proposed.

The agencies are also retaining, as proposed, the deductions in the general risk-based capital rules for investments in unconsolidated banking and finance subsidiaries and reciprocal holdings of bank capital instruments. Further, the agencies are retaining the current treatment for national and state banks that control or hold an interest in a financial subsidiary. As required by the Gramm-Leach-Bliley Act, assets and liabilities of the financial subsidiary are not consolidated with those of the bank for risk-based capital purposes and the bank must deduct its equity investment (including retained earnings) in the financial subsidiary from regulatory capital—50 percent from tier 1 capital and 50 percent from tier 2 capital.[49] A BHC generally does not deconsolidate the assets and liabilities of the financial subsidiaries of the BHC's subsidiary banks and does not deduct from its regulatory capital the equity investments of its subsidiary banks in financial subsidiaries. Rather, a BHC generally fully consolidates the financial subsidiaries of its subsidiary banks. These treatments continue under the final rule.

[49] *See* Public Law 106–102 (November 12, 1999), codified, among other places, at 12 U.S.C. 24a. See also 12 CFR 5.39(h)(1) (national banks); 12 CFR 208.73(a) (state member banks); 12 CFR part 325, Appendix A, § I.B.2. (state nonmember banks). Again, OTS rules are formulated differently. For example, OTS rules do not use the terms ''unconsolidated banking and finance subsidiary'' or ''financial subsidiary.'' Rather, as required by section 5(t)(5) of the Home Owners' Loan Act (HOLA), equity and debt investments in non-includable subsidiaries (generally subsidiaries that are engaged in activities that are not permissible for a national bank) are deducted from assets and tier 1 (core) capital. 12 CFR 567.5(a)(2)(iv) and (v). As required by HOLA, OTS will continue to deduct non-includable subsidiaries. Reciprocal holdings of bank capital instruments are deducted from a savings association's total capital under 12 CFR 567.5(c)(2).

For BHCs with consolidated insurance underwriting subsidiaries that are functionally regulated by a State insurance regulator (or subject to comparable supervision and regulatory capital requirements in a non-U.S. jurisdiction), the proposed rule set forth the following treatment. The assets and liabilities of the subsidiary would be consolidated for purposes of determining the BHC's risk-weighted assets. However, the BHC would deduct from tier 1 capital an amount equal to the insurance underwriting subsidiary's minimum regulatory capital requirement as determined by its functional (or equivalent) regulator. For U.S. regulated insurance underwriting subsidiaries, this amount generally would be 200 percent of the subsidiary's Authorized Control Level as established by the appropriate state insurance regulator.

The proposal noted that its approach with respect to functionally regulated consolidated insurance underwriting subsidiaries was different from the New Accord, which broadly endorses a deconsolidation and deduction approach for insurance subsidiaries. The proposal acknowledged the Board's concern that a full deconsolidation and deduction approach does not capture the credit risk in insurance underwriting subsidiaries at the consolidated BHC level.

Several commenters objected to the proposed deduction from tier 1 capital and instead supported a deduction 50 percent from tier 1 capital and 50 percent from tier 2 capital. Others supported the full deduction and deconsolidation approach endorsed by the New Accord and maintained that, by contrast, the proposed approach was overly conservative and resulted in a double-count of capital requirements for insurance regulation and banking regulation.

The Board continues to believe that a consolidated BHC risk-based capital measure should incorporate all credit, market, and operational risks to which the BHC is exposed, regardless of the legal entity subsidiary where a risk exposure resides. The Board also believes that a fully consolidated approach minimizes the potential for regulatory capital arbitrage; it eliminates incentives to book individual exposures at a subsidiary that is deducted from the consolidated entity for capital purposes where a different, potentially more favorable, capital requirement is applied at the subsidiary. Moreover, the Board does not agree that the proposed approach results in a double-count of capital requirements. Rather, the capital requirements imposed by a functional regulator or other supervisory authority at the subsidiary level reflect the capital needs at the particular subsidiary. The consolidated measure of minimum capital requirements should reflect the consolidated organization.

Thus, the Board is retaining the proposed requirement that assets and liabilities of insurance underwriting subsidiaries are consolidated for determining risk-weighted assets. The Board has modified the final rule for BHCs, however, to allow the associated capital deduction to be made 50 percent from tier 1 capital and 50 percent from tier 2 capital.

V. Calculation of Risk-Weighted Assets

Under the final rule, a bank's total risk-weighted assets is the sum of its credit risk-weighted assets and risk-weighted assets for operational risk, minus the sum of its excess eligible credit reserves (eligible credit reserves in excess of its total ECL) not included in tier 2 capital. Unlike under the proposal, allocated transfer risk reserves are not subtracted from total risk-weighted assets under the final rule. Because the EAD of wholesale exposures and retail segments is calculated net of any allocated transfer risk reserves, a second subtraction of the reserves from risk-weighted assets is not appropriate.

A. Categorization of Exposures

To calculate credit risk-weighted assets, a bank must determine risk-weighted asset amounts for exposures that have been grouped into four general categories: wholesale, retail, securitization, and equity. It must also identify and determine risk-weighted asset amounts for assets not included in an exposure category and any non-material portfolios of exposures to which the bank elects not to apply the IRB approach. To exclude a portfolio from the IRB approach, a bank must demonstrate to the satisfaction of its primary Federal supervisor that the portfolio (when combined with all other portfolios of exposures that the bank seeks to exclude from the IRB approach) is not material to the bank. As described above, credit-risk-weighted assets is defined as 1.06 multiplied by the sum of total wholesale and retail risk-weighted assets, risk-weighted assets for securitization exposures, and risk-weighted assets for equity exposures.

1. Wholesale Exposures

Consistent with the proposed rule, the final rule defines a wholesale exposure as a credit exposure to a company, individual, sovereign entity, or other governmental entity (other than a securitization exposure, retail exposure, or equity exposure).[50] The term ''company'' is broadly defined to mean a corporation, partnership, limited liability company, depository institution, business trust, SPE, association, or similar organization. Examples of a wholesale exposure include: (i) A non-tranched guarantee issued by a bank on behalf of a company;[51] (ii) a repo-style transaction entered into by a bank with a company and any other transaction in which a bank posts collateral to a company and faces counterparty credit risk; (iii) an exposure that a bank treats as a covered position under the market risk rule for which there is a counterparty credit risk capital requirement; (iv) a sale of corporate loans by a bank to a third party in which the bank retains full recourse; (v) an OTC derivative contract entered into by a bank with a company; (vi) an exposure to an individual that is not managed by the bank as part of a segment of exposures with homogeneous risk characteristics; and (vii) a commercial lease.

The agencies proposed two subcategories of wholesale exposures—HVCRE exposures and non-HVCRE exposures. Under the proposed rule, HVCRE exposures would be subject to a separate IRB risk-based capital formula that would produce a higher risk-based capital requirement for a given set of risk parameters than the IRB risk-based capital formula for non-HVCRE wholesale exposures. Further, the agencies proposed that once an exposure was determined to be an HVCRE exposure, it would remain an HVCRE exposure until paid in full, sold, or converted to permanent financing.

The proposed rule defined an HVCRE exposure as a credit facility that finances or has financed the acquisition, development, or construction of real property, excluding facilities that finance (i) one-to four-family residential properties or (ii) commercial real estate projects that meet the following conditions: (A) The exposure's loan-to-value (LTV) ratio is less than or equal to the applicable maximum supervisory LTV ratio in the real estate lending standards of the agencies;[52] (B) the borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised ''as completed'' value; and (C) the borrower contributed the amount of capital required before the bank advances funds under the credit facility, and the capital contributed by the borrower or internally generated by the project is contractually required to remain in the project throughout the life of the project.

Several commenters raised issues related to the requirement that banks must separate HVCRE exposures from other wholesale exposures. One commenter asserted that a separate risk-weight function for HVCRE exposures is unnecessary because the higher risk associated with such exposures would be reflected in higher PDs and LGDs. Other commenters stated that tracking the exception requirements for acquisition, development, or construction loans would be burdensome and expressed concern that all multifamily loans could be subject to the HVCRE treatment. Yet other commenters requested that the agencies exclude from the definition of HVCRE all multifamily acquisition, development, or construction loans; additional commercial real estate exposures; and other exposures with significant project equity and/or pre-sale commitments. A few commenters supported the proposed approach to HVCRE exposures.

The agencies have determined that the proposed definition of HVCRE exposures strikes an appropriate balance between risk-sensitivity and simplicity.

[50] The proposed rule excluded from the definition of a wholesale exposure certain pre-sold one-to-four family residential construction loans and certain multifamily residential loans. The treatment of such loans under the final rule is discussed below in section V.B.5. of the preamble.

[51] As described below, tranched guarantees (like most transactions that involve a tranching of credit risk) generally are securitization exposures under the final rule. The final rule defines a guarantee broadly to include almost any transaction (other than a credit derivative) that involves the transfer of the credit risk of an exposure from one party to another party. This definition of guarantee generally includes, for example, a credit spread option under which a bank has agreed to make payments to its counterparty in the event of an increase in the credit spread associated with a particular reference obligation issued by a company.

[52] 12 CFR part 34, Subpart D (OCC); 12 CFR part 208, Appendix C (Board); 12 CFR part 365, Appendix A (FDIC); and 12 CFR 560.100–560.101 (OTS).

Thus, the final rule retains the definition as proposed. If a bank does not want to track compliance with the definition for burden-related reasons, the bank may choose to apply the HVCRE risk-weight function to all credit facilities that finance the acquisition, construction, or development of multifamily and commercial real property. The agencies believe that this treatment would be an appropriate application of the principle of conservatism discussed in section II.D. of the preamble and set forth in section 1(d) of the final rule.

The New Accord identifies five sub-classes of specialized lending for which the primary source of repayment of the obligation is the income generated by the financed asset(s) rather than the independent capacity of a broader commercial enterprise. The sub-classes are project finance, object finance, commodities finance, income-producing real estate, and HVCRE. The New Accord provides a methodology to accommodate banks that cannot meet the requirements for the estimation of PD for these exposure types. The proposed rule did not include a separate treatment for specialized lending beyond the separate IRB risk-based capital formula for HVCRE exposures specified in the New Accord. The agencies noted in the proposal that sophisticated banks that would be applying the advanced approaches in the United States should be able to estimate risk parameters for specialized lending. The agencies continue to believe that banks using the advanced approaches in the United States should be able to estimate risk parameters for specialized lending and, therefore, have not adopted a separate treatment for specialized lending in the final rule.

In contrast to the New Accord, the agencies did not propose a separate risk-based capital function for exposures to small- and medium-size enterprises (SMEs). The SME function in the New Accord generates a lower risk-based capital requirement for an exposure to an SME than for an exposure to a larger firm that has the same risk parameter values. The agencies were not aware of compelling evidence that smaller firms are subject to less systematic risk than is already reflected in the wholesale exposure risk-based capital formula, which specifies lower AVCs as PDs increase.

A number of commenters objected to this aspect of the proposal and urged the agencies to include in the final rule the SME risk-based capital function from the New Accord. Several commenters expressed concern about potential competitive disparities in the market for SME lending between U.S. banks and foreign banks subject to rules that include the New Accord's treatment of SME exposures. Others asserted that lower AVCs and risk-based capital requirements were appropriate for SME exposures because the asset values of exposures to smaller firms are more idiosyncratic than those of exposures to larger firms.

While commenters raised important issues related to SME exposures, the agencies have decided not to add a distinct risk-weight function for such exposures to the final rule. The agencies continue to believe that a distinct risk-weight function with a lower AVC for SME exposures is not substantiated by sufficient empirical evidence and may give rise to a domestic competitive inequity between banks subject to the advanced approaches and banks subject to the general risk-based capital rules.

2. Retail Exposures

Under the final rule, as under the proposed rule, retail exposures generally include exposures (other than securitization exposures or equity exposures) to an individual and small exposures to businesses that are managed as part of a segment of similar exposures, not on an individual-exposure basis. There are three subcategories of retail exposure: (i) Residential mortgage exposures; (ii) QREs; and (iii) other retail exposures. The final rule retains the proposed definitions of the retail exposure subcategories and, thus, defines residential mortgage exposure as an exposure that is primarily secured by a first or subsequent lien on one- to four-family residential property.[53] This includes both term loans and HELOCs. An exposure primarily secured by a first or subsequent lien on residential property that is not one to four family also is included as a residential mortgage exposure as long as the exposure has both an original and current outstanding amount of no more than $1 million. There is no upper limit on the size of an exposure that is secured by one-to four-family residential properties. To be a residential mortgage exposure, the bank must manage the exposure as part of a segment of exposures with homogeneous risk characteristics. Residential mortgage loans that are managed on an individual basis, rather than managed as part of a segment, are categorized as wholesale exposures.

QREs are defined as exposures to individuals that are (i) revolving, unsecured, and unconditionally cancelable by the bank to the fullest extent permitted by Federal law; (ii) have a maximum exposure amount (drawn plus undrawn) of up to $100,000; and (iii) are managed as part of a segment of exposures with homogeneous risk characteristics. In practice, QREs typically include exposures where customers' outstanding borrowings are permitted to fluctuate based on their decisions to borrow and repay, up to a limit established by the bank. Most credit card exposures to individuals and overdraft lines on individual checking accounts are QREs.

The category of other retail exposures includes two types of exposures. First, all exposures to individuals for non-business purposes (other than residential mortgage exposures and QREs) that are managed as part of a segment of similar exposures are other retail exposures. Such exposures may include personal term loans, margin loans, auto loans and leases, credit card accounts with credit lines above $100,000, and student loans. There is no upper limit on the size of these types of retail exposures to individuals. Second, exposures to individuals or companies for business purposes (other than residential mortgage exposures and QREs), up to a single-borrower exposure threshold of $1 million, that are managed as part of a segment of similar exposures are other retail exposures. For the purpose of assessing exposure to a single borrower, the bank must aggregate all business exposures to a particular legal entity and its affiliates that are consolidated under GAAP. If that borrower is a natural person, any consumer loans (for example, personal credit card loans or mortgage loans) to that borrower would not be part of the aggregate. A bank could distinguish a consumer loan from a business loan by the loan department through which the loan is made. Exposures to a borrower for business purposes primarily secured by residential property count toward the $1 million single-borrower other retail business exposure threshold.[54]

The residual value portion of a retail lease exposure is excluded from the definition of an other retail exposure. Consistent with the New Accord, a bank must assign the residual value portion

[53] The proposed rule excluded from the definition of a residential mortgage exposure certain pre-sold one- to-four family residential construction loans and certain multifamily residential loans. The treatment of such loans under the final rule is discussed below in section V.B.5. of the preamble.

[54] The proposed rule excluded from the definition of an other retail exposure certain pre-sold one-to-four family residential construction loans and certain multifamily residential loans. The treatment of such loans under the final rule is discussed below in section V.B.5. of the preamble.

of a retail lease exposure a risk-weighted asset amount equal to its residual value as described in section 31 of the final rule.

3. Securitization Exposures

The proposed rule defined a securitization exposure as an on-balance sheet or off-balance sheet credit exposure that arises from a traditional or synthetic securitization (including credit-enhancing representations and warranties). A traditional securitization was defined as a transaction in which (i) all or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties other than through the use of credit derivatives or guarantees; (ii) the credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority; (iii) performance of the securitization exposures depends on the performance of the underlying exposures; and (iv) all or substantially all of the underlying exposures are financial exposures. Examples of financial exposures are loans, commitments, receivables, asset-backed securities, mortgage-backed securities, other debt securities, equity securities, or credit derivatives. The proposed rule also defined mortgage-backed pass-through securities guaranteed by Fannie Mae or Freddie Mac (whether or not issued out of a structure that tranches credit risk) as securitization exposures.

A synthetic securitization was defined as a transaction in which (i) all or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties through the use of one or more credit derivatives or guarantees (other than a guarantee that transfers only the credit risk of an individual retail exposure); (ii) the credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority; (iii) performance of the securitization exposures depends on the performance of the underlying exposures; and (iv) all or substantially all of the underlying exposures are financial exposures. Accordingly, the proposed definition of a securitization exposure included tranched cover or guarantee arrangements—that is, arrangements in which an entity transfers a portion of the credit risk of an underlying exposure to one or more guarantors or credit derivative providers but also retains a portion of the credit risk, where the risk transferred and the risk retained are of different seniority levels.

The preamble to the proposal noted that, provided there is a tranching of credit risk, securitization exposures could include, among other things, asset-backed and mortgage-backed securities; loans, lines of credit, liquidity facilities, and financial standby letters of credit; credit derivatives and guarantees; loan servicing assets; servicer cash advance facilities; reserve accounts; credit-enhancing representations and warranties; and CEIOs. Securitization exposures also could include assets sold with retained tranched recourse.

As explained in the proposal, if a bank purchases an asset-backed security issued by a securitization SPE and purchases a credit derivative to protect itself from credit losses associated with the asset-backed security, the purchase of the credit derivative by the investing bank does not turn the traditional securitization into a synthetic securitization. Instead, the investing bank would be viewed as having purchased a traditional securitization exposure and would reflect the CRM benefits of the credit derivative through the securitization CRM rules described later in the preamble and in section 46 of the rule. Moreover, if a bank provides a guarantee or a credit derivative on a securitization exposure, that guarantee or credit derivative would also be a securitization exposure.

Commenters raised several objections to the proposed definitions of traditional and synthetic securitizations. First, several commenters objected to the requirement that all or substantially all of the underlying exposures must be financial exposures. These commenters noted that the securitization market rapidly evolves and expands to cover new asset classes—such as intellectual property rights, project finance revenues, and entertainment royalties—that may or may not be financial assets. Commenters expressed particular concern that the proposed definitions may exclude from the securitization framework leases that include a material lease residual component.

The agencies believe that requiring all or substantially all of the underlying exposures for a securitization to be financial exposures creates an important boundary between the wholesale and retail frameworks, on the one hand, and the securitization framework, on the other hand. Accordingly, the agencies are maintaining this requirement in the final rule. The securitization framework was designed to address the tranching of the credit risk of financial exposures and was not designed, for example, to apply to tranched credit exposures to commercial or industrial companies or nonfinancial assets. Accordingly, under the final rule, a specialized loan to finance the construction or acquisition of large-scale projects (for example, airports and power plants), objects (for example, ships, aircraft, or satellites), or commodities (for example, reserves, inventories, precious metals, oil, or natural gas) generally is not a securitization exposure because the assets backing the loan typically are nonfinancial assets (the facility, object, or commodity being financed). In addition, although some structured transactions involving income-producing real estate or HVCRE can resemble securitizations, these transactions generally would not be securitizations because the underlying exposure would be real estate. Consequently, exposures resulting from the tranching of the risks of nonfinancial assets are not subject to the final rule's securitization framework, but generally are subject to the rules for wholesale exposures.

Based on their cash flow characteristics, for purposes of the final rule, the agencies would consider many of the asset classes identified by commenters including lease residuals and entertainment royalties—to be financial assets. Both the designation of exposures as securitization exposures and the calculation of risk-based capital requirements for securitization exposures will be guided by the economic substance of a transaction rather than its legal form.[55]

Some commenters asserted that the proposal generally to define as securitization exposures all exposures involving credit risk tranching of underlying financial assets was too broad. The proposed definition captured many exposures these commenters did not consider to be securitization exposures, including tranched exposures to a single underlying financial exposure and exposures to many hedge funds and private equity funds. Commenters requested flexibility to apply the wholesale or equity framework (depending on the exposure) rather than the securitization framework to these exposures.

The agencies believe that a single, unified approach to dealing with the tranching of credit risk is important to create a level playing field across the securitization, credit derivative, and other financial markets, and therefore have decided to maintain the proposed treatment of tranched exposures to a

[55] Several commenters asked the agencies to confirm that the typical syndicated credit facility would not be a securitization exposure. The agencies confirm that a syndicated credit facility is not a securitization exposure so long as less than substantially all of the borrower's assets are financial exposures.

single underlying financial asset in the final rule. The agencies believe that basing the applicability of the securitization framework on the presence of some minimum number of underlying exposures would complicate the rule and would create a divergence from the New Accord, without any material improvement in risk sensitivity. The securitization framework is designed specifically to deal with tranched exposures to credit risk. Moreover, the principal risk-based capital approaches of the securitization framework take into account the effective number of underlying exposures.

The agencies agree with commenters that the proposed definition for securitization exposures was quite broad and captured some exposures that would more appropriately be treated under the wholesale or equity frameworks. To limit the scope of the IRB securitization framework, the agencies have modified the definition of traditional securitization in the final rule to make clear that operating companies are not traditional securitizations (even if all or substantially all of their assets are financial exposures). For purposes of the final rule's definition of traditional securitization, operating companies generally are companies that produce goods or provide services beyond the business of investing, reinvesting, holding, or trading in financial assets. Examples of operating companies are depository institutions, bank holding companies, securities brokers and dealers, insurance companies, and non-bank mortgage lenders. Accordingly, an equity investment in an operating company, such as a bank, generally would be an equity exposure under the final rule; a debt investment in an operating company, such as a bank, generally would be a wholesale exposure under the final rule.

Investment firms, which generally do not produce goods or provide services beyond the business of investing, reinvesting, holding, or trading in financial assets, are not operating companies for purposes of the final rule and would not qualify for this general exclusion from the definition of traditional securitization. Examples of investment firms would include companies that are exempted from the definition of an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)) by either section 3(c)(1) (15 U.S.C. 80a–3(c)(1)) or section 3(c)(7) (15 U.S.C. 80a–3(c)(7)) of the Act.

The final definition of a traditional securitization also provides the primary Federal supervisor of a bank with discretion to exclude from the definition of traditional securitization investment firms that exercise substantially unfettered control over the size and composition of their assets, liabilities, and off-balance sheet transactions. The agencies will consider a number of factors in the exercise of this discretion, including an assessment of the investment firm's leverage, risk profile, and economic substance. This supervisory exclusion is intended to provide discretion to a bank's primary Federal supervisor to distinguish structured finance transactions, to which the securitization framework was designed to apply, from more flexible investment firms such as many hedge funds and private equity funds. Only investment firms that can easily change the size and composition of their capital structure, as well as the size and composition of their assets and off-balance sheet exposures, would be eligible for this exclusion from the definition of traditional securitization under this new provision. The agencies do not consider managed collateralized debt obligation vehicles, structured investment vehicles, and similar structures, which allow considerable management discretion regarding asset composition but are subject to substantial restrictions regarding capital structure, to have substantially unfettered control. Thus, such transactions meet the final rule's definition of traditional securitization.

The agencies also have added two additional exclusions to the definition of traditional securitization for small business investment companies (SBICs) and community development investment vehicles. As a result, a bank's equity investments in SBICs and community development equity investments generally are treated as equity exposures under the final rule.

The agencies remain concerned that the line between securitization exposures and non-securitization exposures may be difficult to draw in some circumstances. In addition to the supervisory exclusion from the definition of traditional securitization described above, the agencies have added a new component to the definition of traditional securitization to specifically permit a primary Federal supervisor to scope certain transactions into the securitization framework if justified by the economics of the transaction. Similar to the analysis for excluding an investment firm from treatment as a traditional securitization, the agencies will consider the economic substance, leverage, and risk profile of transactions to ensure that the appropriate IRB classification is made. The agencies will consider a number of factors when assessing the economic substance of a transaction including, for example, the amount of equity in the structure, overall leverage (whether on- or off-balance sheet), whether redemption rights attach to the equity investor, and the ability of the junior tranches to absorb losses without interrupting contractual payments to more senior tranches.

One commenter asked whether a bank could ignore the credit protection provided by a tranched guarantee for risk-based capital purposes and instead calculate the risk-based capital requirement for the guaranteed exposure as if the guarantee did not exist. The agencies believe that this treatment would be an appropriate application of the principle of conservatism discussed in section II.D. of this preamble and set forth in section 1(d) of the final rule.

As noted above, the proposed rule defined mortgage-backed pass-through securities guaranteed by Fannie Mae or Freddie Mac (whether or not issued out of a structure that tranches credit risk) as securitization exposures. The agencies have reconsidered this proposal and have concluded that a special treatment for these securities is inconsistent with the New Accord and would violate the fundamental credit-tranching-based nature of the definition of securitization exposures. The final rule therefore does not define all mortgage-backed pass-through securities guaranteed by Fannie Mae or Freddie Mac to be securitization exposures. As a result, those mortgage-backed securities that involve tranching of credit risk will be securitization exposures; those mortgage-backed securities that do not involve tranching of credit risk will not be securitization exposures.[56]

A few commenters asserted that OTC derivatives with a securitization SPE as the counterparty should be excluded from the definition of securitization exposure and treated as wholesale exposures. The agencies believe that the securitization framework is the most appropriate way to assess the counterparty credit risk of such exposures because this risk is a tranched exposure to the credit risk of the underlying financial assets of the

[56] Several commenters asked the agencies to clarify whether a special purpose entity that issues multiple classes of securities that have equal priority in the capital structure of the issuer but different maturities would be considered a securitization SPE. The agencies do not believe that maturity differentials alone constitute credit risk tranching for purposes of the definitions of traditional securitization and synthetic securitization.

securitization SPE. The agencies are addressing specific commenter concerns about the burden of applying the securitization framework to these exposures in preamble section V.E. below and section 42(a)(5) of the final rule.

4. Equity Exposures

The proposed rule defined an equity exposure to mean:

(i) A security or instrument whether voting or non-voting that represents a direct or indirect ownership interest in, and a residual claim on, the assets and income of a company, unless: (A) The issuing company is consolidated with the bank under GAAP; (B) the bank is required to deduct the ownership interest from tier 1 or tier 2 capital; (C) the ownership interest is redeemable; (D) the ownership interest incorporates a payment or other similar obligation on the part of the issuing company (such as an obligation to pay periodic interest); or (E) the ownership interest is a securitization exposure.

(ii) A security or instrument that is mandatorily convertible into a security or instrument described in (i).

(iii) An option or warrant that is exercisable for a security or instrument described in (i).

(iv) Any other security or instrument (other than a securitization exposure) to the extent the return on the security or instrument is based on the performance of a security or instrument described in (i). For example, a short position in an equity security or a total return equity swap would be characterized as an equity exposure.

The proposal noted that nonconvertible term or perpetual preferred stock generally would be considered wholesale exposures rather than equity exposures. Financial instruments that are convertible into an equity exposure only at the option of the holder or issuer also generally would be considered wholesale exposures rather than equity exposures provided that the conversion terms do not expose the bank to the risk of losses arising from price movements in that equity exposure. Upon conversion, the instrument would be treated as an equity exposure. In addition, the agencies note that unfunded equity commitments, which are commitments to make equity investments at a future date, meet the definition of an equity exposure.

Many commenters expressed support for the proposed definition of equity exposure, except for the proposed exclusion of equity investments in hedge funds and other leveraged investment vehicles, as discussed above. The agencies are adopting the proposed definition for equity exposures with one exception. They have eliminated in the final rule the exclusion of a redeemable ownership interest from the definition of equity exposure. The agencies believe that redeemable ownership interests, such as those in mutual funds and private equity funds, are most appropriately treated as equity exposures.

The agencies anticipate that, as a general matter, each of a bank's exposures will fit in one and only one exposure category. One exception to this principle is that equity derivatives generally will meet the definition of an equity exposure (because of the bank's exposure to the underlying equity security) and the definition of a wholesale exposure (because of the bank's credit risk exposure to the counterparty). In such cases, as discussed in more detail below, the bank's risk-based capital requirement for the equity derivative generally is the sum of its risk-based capital requirement for the derivative counterparty credit risk and for the underlying exposure.

5. Boundary Between Operational Risk and Other Risks

With the introduction of an explicit risk-based capital requirement for operational risk, issues arise about the proper treatment of operational losses that also could be attributed to either credit risk or market risk. The agencies recognize that these boundary issues are important and have significant implications for how banks must compile loss data sets and compute risk-based capital requirements under the final rule. Consistent with the treatment in the New Accord and the proposed rule, banks must treat operational losses that are related to market risk as operational losses for purposes of calculating risk-based capital requirements under this final rule. For example, losses incurred from a failure of bank personnel to properly execute a stop loss order, from trading fraud, or from a bank selling a security when a purchase was intended, must be treated as operational losses.

Under the proposed rule, banks would treat losses that are related to both operational risk and credit risk as credit losses for purposes of calculating risk-based capital requirements. For example, where a loan defaults (credit risk) and the bank discovers that the collateral for the loan was not properly secured (operational risk), the bank's resulting loss would be attributed to credit risk (not operational risk). This general separation between credit and operational risk is supported by current U.S. accounting standards for the treatment of credit risk.

To be consistent with prevailing practice in the credit card industry, the proposed rule included an exception to this standard for retail credit card fraud losses. Specifically, retail credit card losses arising from non-contractual, third party-initiated fraud (for example, identity theft) would be treated as external fraud operational losses under the proposed rule. All other third party-initiated losses would be treated as credit losses.

Generally, commenters urged the agencies not to be prescriptive on risk boundary issues and to give banks discretion to categorize risk as they deem appropriate, subject to supervisory review. Other commenters noted that boundary issues are so significant that the agencies should not contemplate any additional exceptions to treating losses related to both credit and operational risk as credit losses unless the exceptions are agreed to by the BCBS. Several commenters objected to specific aspects of the agencies' proposal and suggested that additional types of losses related to credit risk and operational risk, including losses related to check fraud, overdraft fraud, and small business loan fraud, should be treated as operational losses for purposes of calculating risk-based capital requirements. One commenter expressly noted its support for the agencies' proposal, which effectively requires banks to treat losses on HELOCs related to both credit risk and operational risk as credit losses for purposes of calculating risk-based capital requirements.

Because of the substantial potential impact boundary issues have on risk-based capital requirements under the advanced approaches, there should be consistency across U.S. banks in how they categorize losses that relate to both credit risk and operational risk. Moreover, the agencies believe that international consistency on this issue is an important objective. Therefore, the final rule maintains the proposed boundaries for losses that relate to both credit risk and operational risk and does not incorporate any additional exemptions beyond that in the proposal.

6. Boundary Between the Final Rule and the Market Risk Rule

For banks subject to the market risk rule, the existing market risk rule applies to all positions classified as trading positions in regulatory reports. The New Accord establishes additional criteria for positions to be eligible for application of the market risk rule. The agencies are incorporating these additional criteria into the market risk rule through a separate rulemaking that is expected to be finalized soon and published in the **Federal Register**. Under this final rule, as under the proposal, core and opt-in banks subject to the market risk rule must use the market risk rule for exposures that are covered positions under the market risk rule. Core and opt-in banks not subject to the market risk rule must use this final rule for all of their exposures.

B. Risk-Weighted Assets for General Credit Risk (Wholesale Exposures, Retail Exposures, On-Balance Sheet Assets That Are Not Defined by Exposure Category, and Immaterial Credit Portfolios)

Under the proposed rule, the wholesale and retail risk-weighted assets calculation consisted of four phases: (1) Categorization of exposures; (2) assignment of wholesale exposures to rating grades and segmentation of retail exposures; (3) assignment of risk parameters to wholesale obligors and exposures and segments of retail exposures; and (4) calculation of risk-weighted asset amounts. The agencies did not receive any negative comments on the four phases for calculating wholesale and retail risk-weighted assets and, thus, are adopting the four-phase concept as proposed. Where applicable, the agencies have clarified particular issues within the four-phase process.

1. Phase 1—Categorization of Exposures

In phase 1, a bank must determine which of its exposures fall into each of the four principal IRB exposure categories—wholesale exposures, retail exposures, securitization exposures, and equity exposures. In addition, a bank must identify within the wholesale exposure category certain exposures that receive a special treatment under the wholesale framework. These exposures include HVCRE exposures, sovereign exposures, eligible purchased wholesale exposures, eligible margin loans, repo-style transactions, OTC derivative contracts, unsettled transactions, and eligible guarantees and eligible credit derivatives that are used as credit risk mitigants.

The treatment of HVCRE exposures and eligible purchased wholesale receivables is discussed below in this section. The treatment of eligible margin loans, repo-style transactions, OTC derivative contracts, and eligible guarantees and eligible credit derivatives that are credit risk mitigants is discussed in section V.C. of the preamble. In addition, sovereign exposures and exposures to or directly and unconditionally guaranteed by the Bank for International Settlements, the International Monetary Fund, the European Commission, the European Central Bank, and multilateral development banks are exempt from the 0.03 percent floor on PD discussed in the next section.

The proposed rule recognized as multilateral development banks only those multilateral lending institutions or regional development banks in which the U.S. government is a shareholder or contributing member. The final rule adopts a slightly expanded definition of multilateral development bank. Specifically, under the final rule, multilateral development bank is defined to include the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank; any multilateral lending institution or regional development bank in which the U.S. government is a shareholder or contributing member; and any multilateral lending institution that a bank's primary Federal supervisor determines poses comparable credit risk.

In phase 1, a bank also must subcategorize its retail exposures as residential mortgage exposures, QREs, or other retail exposures. In addition, a bank must identify any on-balance sheet asset that does not meet the definition of a wholesale, retail, securitization, or equity exposure, as well as any non-material portfolio of exposures to which it chooses, subject to supervisory review, not to apply the IRB risk-based capital formulas.

2. Phase 2—Assignment of Wholesale Obligors and Exposures to Rating Grades and Retail Exposures to Segments

In phase 2, a bank must assign each wholesale obligor to a single rating grade (for purposes of assigning an estimated PD) and may assign each wholesale exposure to loss severity rating grades (for purposes of assigning an estimated LGD). A bank that elects not to use a loss severity rating grade system for a wholesale exposure must directly assign an estimated LGD to the wholesale exposure in phase 3. As a part of the process of assigning wholesale obligors to rating grades, a bank must identify which of its wholesale obligors are in default. In addition, a bank must group its retail exposures within each retail subcategory into segments that have homogeneous risk characteristics.[57]

Segmentation is the grouping of exposures within each subcategory according to the predominant risk characteristics of the borrower (for example, credit score, debt-to-income ratio, and delinquency) and the exposure (for example, product type and LTV ratio). In general, retail segments should not cross national jurisdictions. A bank has substantial flexibility to use the retail portfolio segmentation it believes is most appropriate for its activities, subject to the following broad principles:

- Differentiation of risk—Segmentation should provide meaningful differentiation of risk. Accordingly, in developing its risk segmentation system, a bank should consider the chosen risk drivers' ability to separate risk consistently over time and the overall robustness of the bank's approach to segmentation.
- Reliable risk characteristics—Segmentation should use borrower-related risk characteristics and exposure-related risk characteristics that reliably and consistently over time differentiate a segment's risk from that of other segments.
- Consistency—Risk drivers for segmentation should be consistent with the predominant risk characteristics used by the bank for internal credit risk measurement and management.
- Accuracy—The segmentation system should generate segments that separate exposures by realized performance and should be designed so that actual long-run outcomes closely approximate the retail risk parameters estimated by the bank.

A bank might choose to segment exposures by common risk drivers that are relevant and material in determining the loss characteristics of a particular retail product. For example, a bank may segment mortgage loans by LTV band, age from origination, geography, origination channel, and credit score. Statistical modeling, expert judgment, or some combination of the two may determine the most relevant risk drivers. Alternatively, a bank might segment by grouping exposures with similar loss characteristics, such as loss rates or

[57] If the bank determines the EAD for eligible margin loans using the approach in section 32(b) of the rule, it must segment retail eligible margin loans for which the bank uses this approach separately from other retail exposures.

default rates, as determined by historical performance of segments with similar risk characteristics.

A bank must segment defaulted retail exposures separately from non-defaulted retail exposures and should base the segmentation of defaulted retail exposures on characteristics that are most predictive of current loss and recovery rates. This segmentation should provide meaningful differentiation so that individual exposures within each defaulted segment do not have material differences in their expected loss severity.

Banks commonly obtain tranched credit protection, for example first-loss or second-loss guarantees, on certain retail exposures such as residential mortgages. The proposal recognized that the securitization framework, which applies to tranched wholesale exposures, is not appropriate for individual retail exposures. Therefore, the agencies proposed to exclude tranched guarantees that apply only to an individual retail exposure from the securitization framework. The preamble to the proposal noted that an important result of this exclusion is that, in contrast to the treatment of wholesale exposures, a bank may recognize recoveries from both a borrower and a guarantor for purposes of estimating LGD for certain retail exposures.

Most commenters who addressed the agencies' proposed treatment for tranched retail guarantees supported the proposed approach. One commenter urged the agencies to extend the treatment of tranched guarantees of retail exposures to wholesale exposures. Another commenter asserted that the proposed treatment was inconsistent with the New Accord.

The agencies have determined that while the securitization framework is the most appropriate risk-based capital treatment for most tranched guarantees, the regulatory burden associated with applying it to tranched guarantees of individual retail exposures exceeds the supervisory benefit. The agencies are therefore adopting the proposed treatment in the final rule and excluding tranched guarantees of individual retail exposures from the securitization framework.

Some banks expressed concern about the treatment of eligible margin loans under the New Accord. Due to the highly collateralized nature and low loss frequency of margin loans, banks typically collect little customer-specific information that they could use to differentiate margin loans into segments. The agencies believe that a bank could appropriately segment its margin loan portfolio using only product-specific risk drivers, such as product type and origination channel. A bank could then use the definition of default to associate a PD and LGD with each segment. As described in section 32 of the rule, a bank may adjust the EAD of eligible margin loans to reflect the risk-mitigating effect of financial collateral. If a bank elects this option to adjust the EAD of eligible margin loans, it must associate an LGD with the segment that does not reflect the presence of collateral.

Under the proposal, if a bank was not able to estimate PD and LGD for an eligible margin loan, the bank could apply a 300 percent risk weight to the EAD of the loan. Commenters generally objected to this approach. As discussed in section III.B.3. of the preamble, several commenters asserted that the agencies should permit banks to treat margin loans and other portfolios that exhibit low loss frequency or for which a bank has limited data on a portfolio basis, by apportioning EL between PD and LGD for portfolios rather than estimating each risk parameter separately. Other commenters suggested that banks should be expected to develop sound practices for applying the IRB approach to such exposures and adopt an appropriate degree of conservatism to address the level of uncertainty in the estimation process. Several commenters added that if a bank simply is unable to estimate PD and LGD for eligible margin loans, they would support the agencies' proposal to apply a flat risk weight to the EAD of eligible margin loans. However, they asserted that the risk weight should not exceed 100 percent given the low levels of loss associated with these types of exposures.

As discussed in section III.B.3. of the preamble, the final rule provides flexibility and incentives for banks to develop and document sound practices for applying the IRB approach to portfolios with limited data or default history, which may include eligible margin loans. However, the agencies believe that for banks facing particular challenges with respect to estimating PD and LGD for eligible margin loans, the proposed application of a 300 percent risk weight to the EAD of an eligible margin loan is a reasonable alternative. The option balances pragmatism with the provision of appropriate incentives for banks to develop processes to apply the IRB approach to such exposures. Accordingly, the final rule continues to provide banks with the option of applying a 300 percent risk weight to the EAD of an eligible margin loan for which it cannot estimate PD and LGD.

Purchased Wholesale Exposures

A bank may also elect to use a top-down approach, similar to the treatment of retail exposures, for eligible purchased wholesale exposures. Under the final rule, as under the proposal, this approach may be used for exposures purchased directly by the bank. In addition, the final rule clarifies that this approach also may be used for exposures purchased by a securitization SPE in which the bank has invested and for which the bank calculates the capital requirement on the underlying exposures (K_{IRB}) for purposes of the SFA (as defined in section V.E.4. of the preamble). Under this approach, in phase 2, a bank would group its eligible purchased wholesale exposures into segments that have homogeneous risk characteristics. To be an eligible purchased wholesale exposure, several criteria must be met:

- The purchased wholesale exposure must be purchased from an unaffiliated seller and must not have been directly or indirectly originated by the purchasing bank or securitization SPE;
- The purchased wholesale exposure must be generated on an arm's-length basis between the seller and the obligor (intercompany accounts receivable and receivables subject to contra-accounts between firms that buy and sell to each other would not satisfy this criterion);
- The purchasing bank must have a claim on all proceeds from the exposure or a pro rata interest in the proceeds;
- The purchased wholesale exposure must have an effective remaining maturity of less than one year; and
- The purchased wholesale exposure must, when consolidated by obligor, not represent a concentrated exposure relative to the portfolio of purchased wholesale exposures.

Wholesale Lease Residuals

The agencies proposed a treatment for wholesale lease residuals that differs from the New Accord. A wholesale lease residual typically exposes a bank to the risk of a decline in value of the leased asset and to the credit risk of the lessee. Although the New Accord provides for a flat 100 percent risk weight for wholesale lease residuals, the preamble to the proposal noted that the agencies believed this treatment was excessively punitive for leases to highly creditworthy lessees. Accordingly, the proposed rule required a bank to treat its net investment in a wholesale lease as a single exposure to the lessee. As proposed, there would not be a separate capital calculation for the wholesale lease residual. Commenters on this issue broadly supported the agencies' proposed approach. The agencies believe the proposed approach appropriately reflects current bank risk management practice and are adopting the proposed approach in the final rule.

Commenters also requested this treatment for retail lease residuals. However, the agencies have determined that the proposal to apply a flat 100 percent risk weight for retail lease residuals, consistent with the New Accord, appropriately balances risk sensitivity and complexity and are maintaining this treatment in the final rule.

3. Phase 3—Assignment of Risk Parameters to Wholesale Obligors and Exposures and Retail Segments

In phase 3, a bank associates a PD with each wholesale obligor rating grade; associates an LGD with each wholesale loss severity rating grade or assigns an LGD to each wholesale exposure; assigns an EAD and M to each wholesale exposure; and assigns a PD, LGD, and EAD to each segment of retail exposures. In some cases it may be reasonable to assign the same PD, LGD, or EAD to multiple segments of retail exposures. The quantification phase for PD, LGD, and EAD can generally be divided into four steps—obtaining historical reference data, estimating the risk parameters for the reference data, mapping the historical reference data to the bank's current exposures, and determining the risk parameters for the bank's current exposures. As discussed in more detail below, quantification of M is accomplished through direct computation based on the contractual characteristics of the exposure.

A bank should base its estimation of the values assigned to PD, LGD, and EAD [58] on historical reference data that are a reasonable proxy for the bank's current exposures and that provide meaningful predictions of the performance of such exposures. A ''reference data set'' consists of a set of exposures to defaulted wholesale obligors and defaulted retail exposures (in the case of LGD and EAD estimation) or to both defaulted and non-defaulted wholesale obligors and retail exposures (in the case of PD estimation).

The reference data set should be described using a set of observed characteristics. Relevant characteristics might include debt ratings, financial measures, geographic regions, the economic environment and industry/sector trends during the time period of the reference data, borrower and loan characteristics related to the risk parameters (such as loan terms, LTV ratio, credit score, income, debt-to-income ratio, or performance history), or other factors that are related in some way to the risk parameters. Banks may use more than one reference data set to improve the robustness or accuracy of the parameter estimates.

A bank should then apply statistical techniques to the reference data to determine a relationship between risk characteristics and the estimated risk parameter. The result of this step is a model that ties descriptive characteristics to the risk parameter estimates. In this context, the term ''model'' is used in the most general sense; a model may use simple concepts, such as the calculation of averages, or more complex ones, such as an approach based on rigorous regression techniques. This step may include adjustments for differences between this final rule's definition of default and the default definition in the reference data set, or adjustments for data limitations. This step includes adjustments for seasoning effects related to retail exposures, if material.

A bank may use more than one estimation technique to generate estimates of the risk parameters, especially if there are multiple sets of reference data or multiple sample periods. If multiple estimates are generated, the bank should have a clear and consistent policy on reconciling and combining the different estimates.

Once a bank estimates PD, LGD, and EAD for its reference data sets, it should create a link between its portfolio data and the reference data based on corresponding characteristics. Variables or characteristics that are available for the existing portfolio should be mapped or linked to the variables used in the default, loss-severity, or exposure amount model. In order to effectively map the data, reference data characteristics need to allow for the construction of rating and segmentation criteria that are consistent with those used on the bank's portfolio. An important element of mapping is making adjustments for differences between reference data sets and the bank's exposures.

Finally, a bank must apply the risk parameters estimated for the reference data to the bank's actual portfolio data. As noted above, the bank must attribute a PD to each wholesale obligor risk grade, an LGD to each wholesale loss severity grade or wholesale exposure, an EAD and M to each wholesale exposure, and a PD, LGD, and EAD to each segment of retail exposures. If multiple data sets or estimation methods are used, the bank must adopt a means of combining the various estimates at this stage.

The final rule, as noted above, permits a bank to elect to segment its eligible purchased wholesale exposures like retail exposures. A bank that chooses to apply this treatment must directly assign a PD, LGD, EAD, and M to each such segment. If a bank can estimate ECL (but not PD or LGD) for a segment of eligible purchased wholesale exposures, the bank must assume that the LGD of the segment equals 100 percent and that the PD of the segment equals ECL divided by EAD. The bank must estimate ECL for the eligible purchased wholesale exposures without regard to any assumption of recourse or guarantees from the seller or other parties. The bank must then use the wholesale exposure formula in section 31(e) of the final rule to determine the risk-based capital requirement for each segment of eligible purchased wholesale exposures.

A bank may recognize the credit risk mitigation benefits of collateral that secures a wholesale exposure by adjusting its estimate of the LGD of the exposure and may recognize the credit risk mitigation benefits of collateral that secures retail exposures by adjusting its estimate of the PD and LGD of the segment of retail exposures. In certain cases, however, a bank may take financial collateral into account in estimating the EAD of repo-style transactions, eligible margin loans, and OTC derivative contracts (as provided in section 32 of the final rule).

Consistent with the proposed rule, the final rule also provides that a bank may use an EAD of zero for (i) derivative contracts that are publicly traded on an exchange that requires the daily receipt and payment of cash-variation margin; (ii) derivative contracts and repo-style transactions that are outstanding with a qualifying central counterparty (defined below), but not for those transactions that the qualifying central counterparty has rejected; and (iii) credit risk exposures to a qualifying central counterparty that arise from derivative contracts and repo-style transactions in the form of clearing deposits and posted collateral. The final rule, like the proposed rule, defines a qualifying central counterparty as a counterparty (for example, a clearing house) that: (i) Facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts; (ii) requires all participants in its arrangements to be fully collateralized on a daily basis; and (iii) the bank demonstrates to the

[58] EAD for repo-style transactions and eligible margin loans may be calculated as described in section 32 of the final rule. EAD for OTC derivatives must be calculated as described in section 32 of the final rule.

satisfaction of its primary Federal supervisor is in sound financial condition and is subject to effective oversight by a national supervisory authority.

Some repo-style transactions and OTC derivative contracts giving rise to counterparty credit risk may result, from an accounting point of view, in both on- and off-balance sheet exposures. A bank that uses an EAD approach to measure the exposure amount of such transactions is not required to apply separately a risk-based capital requirement to an on-balance sheet receivable from the counterparty recorded in connection with that transaction. Because any exposure arising from the on-balance sheet receivable is captured in the risk-based capital requirement determined under the EAD approach, a separate capital requirement would double count the exposure for regulatory capital purposes.

A bank may take into account the risk reducing effects of eligible guarantees and eligible credit derivatives in support of a wholesale exposure by applying the PD substitution approach or the LGD adjustment approach to the exposure as provided in section 33 of the final rule or, if applicable, applying the double default treatment to the exposure as provided in section 34 of the final rule. A bank may decide separately for each wholesale exposure that qualifies for the double default treatment whether to apply the PD substitution approach, the LGD adjustment approach, or the double default treatment. A bank may take into account the risk-reducing effects of guarantees and credit derivatives in support of retail exposures in a segment when quantifying the PD and LGD of the segment.

The proposed rule imposed several supervisory limitations on risk parameters assigned to wholesale obligors and exposures and segments of retail exposures. First, the PD for each wholesale obligor or segment of retail exposures could not be less than 0.03 percent, except for exposures to or directly and unconditionally guaranteed by a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Commission, the European Central Bank, or a multilateral development bank, to which the bank assigns a rating grade associated with a PD of less than 0.03 percent.

Second, the LGD of a segment of residential mortgage exposures (other than segments of residential mortgage exposures for which all or substantially all of the principal of the exposures is directly and unconditionally guaranteed by the full faith and credit of a sovereign entity) could not be less than 10 percent. These supervisory floors on PD and LGD applied regardless of whether the bank recognized an eligible guarantee or eligible credit derivative as provided in sections 33 and 34 of the proposed rule.

Commenters did not object to the floor on PD, and the agencies are including it in the final rule. A number of commenters, however, objected to the 10 percent floor on LGD for segments of residential mortgage exposures. These commenters asserted that the floor would penalize low-risk mortgage lending and would provide a disincentive for obtaining high-quality collateral. The agencies continue to believe that the LGD floor is appropriate at least until banks and the agencies gain more experience with the advanced approaches. Accordingly, the agencies are maintaining the floor in the final rule. As the agencies gain more experience with the advanced approaches they will reconsider the need for the floor together with other calibration issues identified during the parallel run and transitional floor periods. The agencies also intend to address this issue and other calibration issues with the BCBS and other supervisory and regulatory authorities, as appropriate.

The 10 percent LGD floor for residential mortgage exposures applies at the segment level. The agencies will not allow a bank to artificially group exposures into segments to avoid the LGD floor for mortgage products. A bank should use consistent risk drivers to determine its retail exposure segmentations and not artificially segment low LGD loans with higher LGD loans to avoid the floor.

A bank also must calculate M for each wholesale exposure. Under the proposed rule, for wholesale exposures other than repo-style transactions, eligible margin loans, and OTC derivative contracts subject to a qualifying master netting agreement (defined in section V.C.2. of this preamble), M was defined as the weighted-average remaining maturity (measured in whole or fractional years) of the expected contractual cash flows from the exposure, using the undiscounted amounts of the cash flows as weights. A bank could use its best estimate of future interest rates to compute expected contractual interest payments on a floating-rate exposure, but it could not consider expected but noncontractually required returns of principal, when estimating M. A bank could, at its option, use the nominal remaining maturity (measured in whole or fractional years) of the exposure. The M for repo-style transactions, eligible margin loans, and OTC derivative contracts subject to a qualifying master netting agreement was the weighted-average remaining maturity (measured in whole or fractional years) of the individual transactions subject to the qualifying master netting agreement, with the weight of each individual transaction set equal to the notional amount of the transaction. The M for netting sets for which the bank used the internal models methodology was calculated as described in section 32(c) of the proposed rule.

Many commenters requested more flexibility in the definition of M, including the ability to estimate noncontractually required prepayments and the ability to use either discounted or undiscounted cash flows. However, the agencies believe that the proposed definition of M, which is consistent with the New Accord, is appropriately conservative and provides for a consistent definition of M across internationally active banks. The final rule therefore maintains the proposed definition of M.

Under the final rule, as under the proposal, for most exposures M may be no greater than five years and no less than one year. For exposures that have an original maturity of less than one year and are not part of a bank's ongoing financing of the obligor, however, a bank may set M as low as one day, consistent with the New Accord. An exposure is not part of a bank's ongoing financing of the obligor if the bank (i) has a legal and practical ability not to renew or roll over the exposure in the event of credit deterioration of the obligor; (ii) makes an independent credit decision at the inception of the exposure and at every renewal or rollover; and (iii) has no substantial commercial incentive to continue its credit relationship with the obligor in the event of credit deterioration of the obligor. Examples of transactions that may qualify for the exemption from the one-year maturity floor include amounts due from other banks, including deposits in other banks; bankers'' acceptances; sovereign exposures; short-term self-liquidating trade finance exposures; repo-style transactions; eligible margin loans; unsettled trades and other exposures resulting from payment and settlement processes; and collateralized OTC derivative contracts subject to daily remargining.

4. Phase 4—Calculation of Risk-Weighted Assets

After a bank assigns risk parameters to each of its wholesale obligors and exposures and retail segments, the bank must calculate the dollar risk-based capital requirement for each wholesale exposure to a non-defaulted obligor and each segment of non-defaulted retail exposures (except eligible guarantees and eligible credit derivatives that hedge another wholesale exposure). Other than for exposures to which the bank applies the double default treatment in section 34 of the final rule, a bank makes this calculation by inserting the risk parameters for the wholesale obligor and exposure or retail segment into the appropriate IRB risk-based capital formula specified in Table B, and multiplying the output of the formula (K) by the EAD of the exposure or segment.[59] Section 34 contains a separate double default risk-based capital requirement formula. Eligible guarantees and eligible credit derivatives that are hedges of a wholesale exposure are reflected in the risk-weighted assets amount of the hedged exposure (i) through adjustments made to the risk parameters of the hedged exposure under the PD substitution or LGD adjustment approach in section 33 of the final rule or (ii) through a separate double default risk-based capital requirement formula in section 34 of the final rule.

[59] Alternatively, as noted above, a bank may apply a 300 percent risk weight to the EAD of an eligible margin loan if the bank is not able to assign a rating grade to the obligor of the loan.

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

Table B – IRB Risk-Based Capital Formulas for Wholesale Exposures to Non-Defaulted Obligors and Segments of Non-Defaulted Retail Exposures[1]

Retail	**Capital Requirement (K) Non-Defaulted Exposures**	$K = \left[LGD \times N\left(\frac{N^{-1}(PD) + \sqrt{R} \times N^{-1}(0.999)}{\sqrt{1-R}} \right) - \left(LGD \times PD\right) \right]$
	Correlation Factor (R)	For residential mortgage exposures: $R = 0.15$
		For qualifying revolving exposures: $R = 0.04$
		For other retail exposures: $R = 0.03 + 0.13 \times e^{-35 \times PD}$
Wholesale	**Capital Requirement (K) Non-Defaulted Exposures**	$K = \left[LGD \times N\left(\frac{N^{-1}(PD) + \sqrt{R} \times N^{-1}(0.999)}{\sqrt{1-R}} \right) - \left(LGD \times PD\right) \right] \times \left(\frac{1 + (M - 2.5) \times b}{1 - 1.5 \times b} \right)$
	Correlation Factor (R)	For HVCRE exposures: $R = 0.12 + 0.18 \times e^{-50 \times PD}$
		For wholesale exposures other than HVCRE exposures: $R = 0.12 + 0.12 \times e^{-50 \times PD}$
	Maturity Adjustment (b)	$b = \left(0.11852 - 0.05478 \times \ln(PD)\right)^2$

[1] N(.) means the cumulative distribution function for a standard normal random variable. $N^{-1}(.)$ means the inverse cumulative distribution function for a standard normal random variable. The symbol e refers to the base of the natural logarithms, and the function ln(.) refers to the natural logarithm of the expression within parentheses. The formulas apply when PD is greater than zero. If the PD equals zero, the capital requirement K is equal to zero.

The sum of the dollar risk-based capital requirements for wholesale exposures to non-defaulted obligors (including exposures subject to the double default treatment described below) and segments of non-defaulted retail exposures equals the total dollar risk-based capital requirement for those exposures and segments. The total dollar risk-based capital requirement multiplied by 12.5 equals the risk-weighted asset amount.

Under the proposed rule, to compute the risk-weighted asset amount for a wholesale exposure to a defaulted obligor, a bank would first have to compare two amounts: (i) The sum of 0.08 multiplied by the EAD of the wholesale exposure plus the amount of any charge-offs or write-downs on the exposure; and (ii) K for the wholesale exposure (as determined in Table B immediately before the obligor became defaulted), multiplied by the EAD of the exposure immediately before the exposure became defaulted. If the amount calculated in (i) were equal to or greater than the amount calculated in (ii), the dollar risk-based capital requirement for the exposure would be 0.08 multiplied by the EAD of the exposure. If the amount calculated in (i) were less than the amount calculated in (ii), the dollar risk-based capital requirement for the exposure would be K for the exposure (as determined in Table B immediately before the obligor became defaulted), multiplied by the

EAD of the exposure. The reason for this comparison was to ensure that a bank did not receive a regulatory capital benefit as a result of the exposure moving from non-defaulted to defaulted status.

The proposed rule provided a simpler approach for segments of defaulted retail exposures. The dollar risk-based capital requirement for a segment of defaulted retail exposures was 0.08 multiplied by the EAD of the segment.

Some commenters objected to the proposed risk-based capital treatment of defaulted wholesale exposures, which differs from the approach in the New Accord. These commenters contended that it would be burdensome to track the pre-default risk-based capital requirements for purposes of the proposed comparison. These commenters also claimed that the cost and burden of the proposed treatment of defaulted wholesale exposures would subject banks to a competitive disadvantage relative to international counterparts subject to an approach similar to that in the New Accord.

In view of commenters' concerns about cost and regulatory burden, the final rule treats defaulted wholesale exposures the same as defaulted retail exposures. The dollar risk-based capital requirement of a wholesale exposure to a defaulted obligor equals 0.08 multiplied by the EAD of the exposure. The agencies will review banks' practices to ensure that banks are not moving exposures from non-defaulted to defaulted status for the primary purpose of obtaining a reduction in risk-based capital requirements.

To convert the dollar risk-based capital requirements for defaulted exposures into a risk-weighted asset amount, the bank must sum the dollar risk-based capital requirements for all wholesale exposures to defaulted obligors and segments of defaulted retail exposures and multiply the sum by 12.5.

A bank may assign a risk-weighted asset amount of zero to cash owned and held in all offices of the bank or in transit, and for gold bullion held in the bank's own vaults or held in another bank's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities. The risk-weighted asset amount for an on-balance sheet asset that does not meet the definition of a wholesale, retail, securitization, or equity exposure—for example, property, plant, and equipment and mortgage servicing rights—is its carrying value. The risk-weighted asset amount for a portfolio of exposures that the bank has demonstrated to its primary Federal supervisor's satisfaction is, when combined with all other portfolios of exposures that the bank seeks to treat as immaterial for risk-based capital purposes, not material to the bank generally is its carrying value (for on-balance sheet exposures) or notional amount (for off-balance sheet exposures). For this purpose, the notional amount of an OTC derivative contract that is not a credit derivative is the EAD of the derivative as calculated in section 32 of the final rule. If an OTC derivative contract is a credit derivative, the notional amount is the notional amount of the credit derivative.

Total wholesale and retail risk-weighted assets are defined as the sum of risk-weighted assets for wholesale exposures to non-defaulted obligors and segments of non-defaulted retail exposures, wholesale exposures to defaulted obligors and segments of defaulted retail exposures, assets not included in an exposure category, non-material portfolios of exposures (as calculated under section 31 of the final rule), and unsettled transactions (as calculated under section 35 of the final rule and described in section V.D. of the preamble) minus the amounts deducted from capital pursuant to the general risk-based capital rules (excluding those deductions reversed in section 12 of the final rule).

5. Statutory Provisions on the Regulatory Capital Treatment of Certain Mortgage Loans

The general risk-based capital rules assign 50 percent and 100 percent risk weights to certain one-to four-family residential pre-sold construction loans and multifamily residential loans.[60] The agencies adopted these provisions as a result of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRI Act).[61] The RTCRRI Act mandates that each agency provide in its capital regulations (i) A 50 percent risk weight for certain one-to four-family residential pre-sold construction loans and multifamily residential loans that meet specific statutory criteria in the RTCRRI Act and any other underwriting criteria imposed by the agencies; and (ii) a 100 percent risk weight for one-to four-family residential pre-sold construction loans for residences for which the purchase contract is cancelled.[62]

When Congress enacted the RTCRRI Act in 1991, the agencies' risk-based capital rules reflected the Basel I framework. Consequently, the risk weight treatment for certain categories of mortgage loans in the RTCRRI Act assumes a risk weight bucketing approach, instead of the more risk-sensitive IRB approach in the advanced approaches.

In the proposed rule, the agencies identified three types of residential mortgage loans addressed by the RTCRRI Act that would continue to receive the risk weights provided in the Act. Consistent with the general risk-based capital rules, the proposed rule would apply the following risk weights (instead of the risk weights that would otherwise be produced under the IRB risk-based capital formulas): (i) A 50 percent risk weight for one-to four-family residential construction loans if the residences have been pre-sold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgages and have made substantial earnest money deposits, and the loans meet the other underwriting characteristics established by the agencies in the general risk-based capital rules;[63] (ii) a 50 percent risk weight for multifamily residential loans that meet certain statutory loan-to-value, debt-to-income, amortization, and performance requirements, and meet the other underwriting characteristics established by the agencies in the general risk-based capital rules;[64] and (iii) a 100 percent risk weight for one-to four-family residential pre-sold construction loans for a residence for which the purchase contract is cancelled.[65] Under the proposal, mortgage loans that did not meet the relevant criteria would not qualify for the statutory risk weights and would be risk-weighted according to the IRB risk-based capital formulas.

Commenters generally opposed the proposed assignment of a 50 percent risk weight to multifamily and pre-sold single family residential construction exposures. Commenters maintained that the RTCRRI Act capital requirements do not align with risk, are contrary to the

[60] *See* 12 CFR part 3, Appendix A, section 3(a)(3)(iii) (national banks); 12 CFR part 208, Appendix A, section III.C.3. (state member banks); 12 CFR part 225, Appendix A, section III.C.3. (bank holding companies); 12 CFR part 325, Appendix A, section II.C. (state nonmember banks); 12 CFR 567.6(a)(1)(iii) and (iv) (savings associations).

[61] *See* §§ 618(a) and (b) of the RTCRRI Act, Pub. L. 102–233. The first class includes loans for the construction of a residence consisting of 1-to-4 family dwelling units that have been pre-sold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgages and have made substantial earnest money deposits. The second class includes loans that are secured by a first lien on a residence consisting of more than 4 dwelling units if the loan meets certain criteria outlined in the RTCRRI Act.

[62] *See* §§ 618(a) and (b) of the RTCRRI Act.

[63] *See* § 618(a)(1)((B) of the RTCRRI Act.

[64] *See* § 618(b)(1)(B) of the RTCRRI Act.

[65] *See* § 618(a)(2) of the RTCRRI Act.

intent of the New Accord and to its implementation in other jurisdictions, and would impose additional compliance burdens on banks without any associated benefit.

The agencies agree with these concerns and have decided to adopt in the final rule an alternative described in the preamble to the proposed rule. The proposed rule's preamble noted the tension between the statutory risk weights provided by the RTCRRI Act and the more risk-sensitive IRB approaches to risk-based capital requirements. The preamble observed that the RTCRRI Act permits the agencies to prescribe additional underwriting characteristics for identifying loans that are subject to the 50 percent statutory risk weights, provided these underwriting characteristics are ''consistent with the purposes of the minimum acceptable capital requirements to maintain the safety and soundness of financial institutions.'' The agencies asked whether they should impose the following additional underwriting criteria as additional requirements for a core or opt-in bank to qualify for the statutory 50 percent risk weight for a particular mortgage loan: (i) That the bank has an IRB risk measurement and management system in place that assesses the PD and LGD of prospective residential mortgage exposures; and (ii) that the bank's IRB system generates a 50 percent risk weight for the loan under the IRB risk-based capital formula. If the bank's IRB system does not generate a 50 percent risk weight for a particular loan, the loan would not qualify for the statutory risk weight and would receive the risk weight generated by the IRB system.

A few commenters opposed this alternative approach and indicated that the additional underwriting criteria would increase operational burden. Other commenters, however, observed that compliance with the additional underwriting criteria would not be burdensome.

After careful consideration of the comments and further analysis of the text, spirit and legislative history of the RTCRRI Act, the agencies have concluded that they should impose the additional underwriting criteria described in the preamble to the proposed rule as minimum requirements for a core or opt-in bank to use the statutory 50 percent risk weight for particular loans. The agencies believe that the imposition of these criteria is consistent with the plain language of the RTCRRI Act, which allows a bank to use the 50 percent risk weight only if it meets the additional underwriting characteristics established by the agencies. The agencies have concluded that the additional underwriting characteristics imposed in the final rule are ''consistent with the purposes of the minimum acceptable capital requirements to maintain the safety and soundness of financial institution,'' because the criteria will make the risk-based capital requirement for these loans a function of each bank's historical loss experience for the loans and will therefore more accurately reflect the performance and risk of loss for these loans. The additional underwriting characteristics are also consistent with the purposes and legislative history of RTCRRI Act, which was designed to reflect the true level of risk associated with these types of mortgage loans and to do so in accordance with the Basel Accord.[66]

A capital-related provision of the Federal Deposit Insurance Corporation Improvement Act of 1991 (''FDICIA''), enacted by Congress just four days after its adoption of the RTCRRI Act, also supports the addition of the new underwriting characteristics. Section 305(b)(1)(B) of FDICIA[67] directs each agency to revise its risk-based capital standards for insured depository institutions to ensure that those standards ''reflect the actual performance and expected risk of loss of multifamily mortgages.'' Although this addresses only multifamily mortgage loans (and not one-to four-family residential pre-sold construction loans), it provides the agencies with a Congressional mandate—equal in force and power to section 618 of the RTCRRI Act—to enhance the risk sensitivity of the regulatory capital treatment of multifamily mortgage loans. Crucially, the IRB approach required of core and opt-in banks will produce capital requirements that more accurately reflect both performance and risk of loss for multifamily mortgage loans than either the Basel I risk weight or the RTCRRI Act risk weight.

As noted above, section 618(a)(2) of the RTCRRI Act mandates that each agency amend its capital regulations to provide a 100 percent risk weight to any single-family residential construction loan for which the purchase contract is cancelled. Because the statute does not authorize the agencies to establish additional underwriting characteristics for this small category of loans, the final rule, like the proposed rule, provides a 100 percent risk weight for single-family residential construction loans for which the purchase contract is cancelled.

C. Credit Risk Mitigation (CRM) Techniques

Banks use a number of techniques to mitigate credit risk. This section of the preamble describes how the final rule recognizes the risk-mitigating effects of both financial collateral (defined below) and nonfinancial collateral, as well as guarantees and credit derivatives, for risk-based capital purposes. To recognize credit risk mitigants for risk-based capital purposes, a bank should have in place operational procedures and risk management processes that ensure that all documentation used in collateralizing or guaranteeing a transaction is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions. The bank should have conducted sufficient legal review to reach a well-founded conclusion that the documentation meets this standard and should reconduct such a review as necessary to ensure continuing enforceability.

Although the use of CRM techniques may reduce or transfer credit risk, it simultaneously may increase other risks, including operational, liquidity, and market risks. Accordingly, it is imperative that banks employ robust procedures and processes to control risks, including roll-off risk and concentration of risks, arising from the bank's use of CRM techniques and to monitor the implications of using CRM techniques for the bank's overall credit risk profile.

1. Collateral

Under the final rule, a bank generally recognizes collateral that secures a wholesale exposure as part of the LGD estimation process and generally recognizes collateral that secures a retail exposure as part of the PD and LGD estimation process, as described above in section V.B.3. of the preamble. However, in certain limited circumstances described in the next section, a bank may adjust EAD to reflect the risk mitigating effect of financial collateral.

Although the final rule does not contain specific regulatory requirements about how a bank incorporates collateral into PD or LGD estimates, a bank should, when reflecting the credit risk mitigation benefits of collateral in its estimation of the risk parameters of a wholesale or retail exposure:

(i) Conduct sufficient legal review to ensure, at inception and on an ongoing basis, that all documentation used in the collateralized transaction is binding on

[66] *See,* e.g., Floor debate for the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, p. H11853, House of Representatives, Nov. 26, 1991 (Rep. Wylie)

[67] 12 U.S.C. 1828.

all parties and legally enforceable in all relevant jurisdictions;

(ii) Consider the correlation between obligor risk and collateral risk in the transaction;

(iii) Consider any currency and/or maturity mismatch between the hedged exposure and the collateral;

(iv) Ground its risk parameter estimates for the transaction in historical data, using historical recovery rates where available; and

(v) Fully take into account the time and cost needed to realize the liquidation proceeds and the potential for a decline in collateral value over this time period.

The bank also should ensure that:

(i) The legal mechanism under which the collateral is pledged or transferred ensures that the bank has the right to liquidate or take legal possession of the collateral in a timely manner in the event of the default, insolvency, or bankruptcy (or other defined credit event) of the obligor and, where applicable, the custodian holding the collateral;

(ii) The bank has taken all steps necessary to fulfill legal requirements to secure its interest in the collateral so that it has and maintains an enforceable security interest;

(iii) The bank has clear and robust procedures to ensure observation of any legal conditions required for declaring the default of the borrower and prompt liquidation of the collateral in the event of default;

(iv) The bank has established procedures and practices for (A) conservatively estimating, on a regular ongoing basis, the market value of the collateral, taking into account factors that could affect that value (for example, the liquidity of the market for the collateral and obsolescence or deterioration of the collateral), and (B) where applicable, periodically verifying the collateral (for example, through physical inspection of collateral such as inventory and equipment); and

(v) The bank has in place systems for promptly requesting and receiving additional collateral for transactions whose terms require maintenance of collateral values at specified thresholds.

2. Counterparty Credit Risk of Repo-Style Transactions, Eligible Margin Loans, and OTC Derivative Contracts

This section describes two EAD-based methodologies—a collateral haircut approach and an internal models methodology—that a bank may use instead of an LGD estimation methodology to recognize the benefits of financial collateral in mitigating the counterparty credit risk associated with repo-style transactions, eligible margin loans, collateralized OTC derivative contracts, and single product groups of such transactions with a single counterparty subject to a qualifying master netting agreement (netting sets).[68] A third methodology, the simple VaR methodology, is also available to recognize financial collateral mitigating the counterparty credit risk of single product netting sets of repo-style transactions and eligible margin loans. These methodologies are substantially the same as those in the proposal, except for a few differences identified below.

One difference from the proposal is that, consistent with the New Accord, under the final rule these three methodologies may also be used to recognize the benefits of any collateral (not only financial collateral) mitigating the counterparty credit risk of repo-style transactions that are included in a bank's VaR-based measure under the market risk rule. In response to comments requesting broader application of the EAD-based methodologies for recognizing the risk-mitigating effect of collateral, the agencies added this flexibility to the final rule to enhance international consistency and reduce regulatory burden.

A bank may use any combination of the three methodologies for collateral recognition; however, it must use the same methodology for similar exposures. This means that, as a general matter, the agencies expect a bank to use one of the three methodologies for all its repo-style transactions, one of the three methodologies for all its eligible margin loans, and one of the three methodologies for all its OTC derivative contracts. A bank may, however, apply a different methodology to subsets of repo-style transactions, eligible margin loans, or OTC derivatives by product type or geographical location if its application of different methodologies is designed to separate transactions that do not have similar risk profiles and is not designed to arbitrage the rule. For example, a bank may choose to use one methodology for agency securities lending transactions—that is, repo-style transactions in which the bank, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss—and another methodology for all other repo-style transactions.

This section also describes the methodology for calculating EAD for an OTC derivative contract or set of OTC derivative contracts subject to a qualifying master netting agreement. Table C illustrates which EAD estimation methodologies may be applied to particular types of exposure.

TABLE C

	Current exposure methodology	Collateral haircut approach	Models approach	
			Simple VaR[69] methodology	Internal models methodology
OTC derivative	X			X
Recognition of collateral for OTC derivatives		[70] X		X
Repo-style transaction		X	X	X
Eligible margin loan		X	X	X
Cross-product netting set				X

[68] For purposes of the internal models methodology in section 32(d) of the rule, discussed below in section V.C.4. of this preamble, netting set also means a group of transactions with a single counterparty that are subject to a qualifying cross-product master netting agreement.

[69] Only repo-style transactions and eligible margin loans subject to a single-product qualifying master netting agreement are eligible for the simple VaR methodology.

[70] In conjunction with the current exposure methodology.

Qualifying Master Netting Agreement

Under the final rule, consistent with the proposal, a qualifying master netting agreement is defined to mean any written, legally enforceable bilateral agreement, provided that:

(i) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including bankruptcy, insolvency, or similar proceeding, of the counterparty;

(ii) The agreement provides the bank the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon an event of bankruptcy, insolvency, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions;

(iii) The bank has conducted sufficient legal review to conclude with a well-founded basis (and has maintained sufficient written documentation of that legal review) that the agreement meets the requirements of paragraph (ii) of this definition and that in the event of a legal challenge (including one resulting from default or from bankruptcy, insolvency, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions;

(iv) The bank establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition; and

(v) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement).

The agencies consider the following jurisdictions to be relevant for a qualifying master netting agreement: the jurisdiction in which each counterparty is chartered or the equivalent location in the case of non-corporate entities, and if a branch of a counterparty is involved, then also the jurisdiction in which the branch is located; the jurisdiction that governs the individual transactions covered by the agreement; and the jurisdiction that governs the agreement.

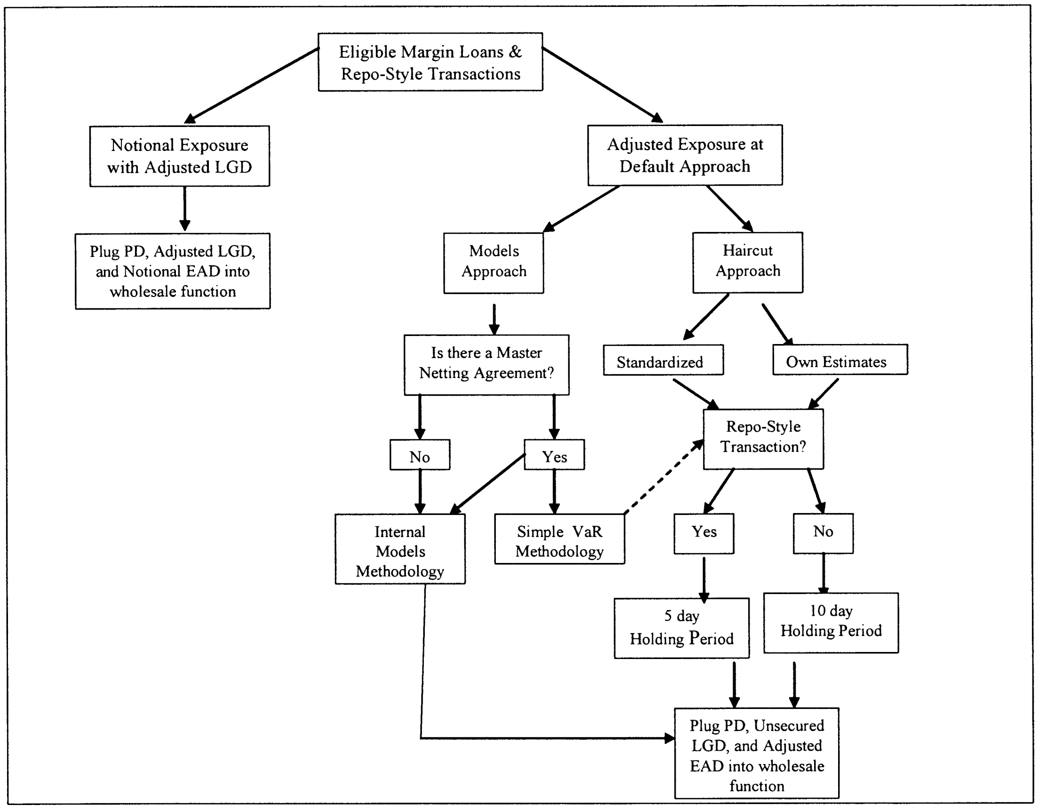
EAD for Repo-Style Transactions and Eligible Margin Loans

Under the final rule, a bank may recognize the risk-mitigating effect of financial collateral that secures a repo-style transaction, eligible margin loan, or single-product netting set of such transactions and the risk-mitigating effect of any collateral that secures a repo-style transaction that is included in a bank's VaR-based measure under the market risk rule through an adjustment to EAD rather than LGD. The bank may use a collateral haircut approach or one of two models approaches: a simple VaR methodology (for single-product netting sets of repo-style transactions or eligible margin loans) or an internal models methodology. Figure 2 illustrates the methodologies available for calculating EAD and LGD for eligible margin loans and repo-style transactions.

[69] Only repo-style transactions and eligible margin loans subject to a single-product qualifying master netting agreement are eligible for the simple VaR methodology.

[70] In conjunction with the current exposure methodology.

Figure 2 – EAD and LGD for Eligible Margin Loans and Repo-Style Transactions



The proposed rule defined a repo-style transaction as a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction (including a transaction in which the bank acts as agent for a customer and indemnifies the customer against loss), provided that:

(i) The transaction is based solely on liquid and readily marketable securities or cash;

(ii) The transaction is marked to market daily and subject to daily margin maintenance requirements;

(iii) The transaction is executed under an agreement that provides the bank the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set off collateral promptly upon an event of default (including upon an event of bankruptcy, insolvency, or similar proceeding) of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions;[71] and

(iv) The bank has conducted and documented sufficient legal review to conclude with a well-founded basis that the agreement meets the requirements of paragraph (iii) of this definition and is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

In the proposal, the agencies recognized that criterion (iii) above may pose challenges for certain transactions that would not be eligible for certain exemptions from bankruptcy or receivership laws because the counterparty—for example, a sovereign entity or a pension fund—is not subject to such laws. The agencies sought comment on ways this criterion could be crafted to accommodate such transactions when justified on prudential grounds, while ensuring that the requirements in criterion (iii) are met for transactions that are eligible for those exemptions.

Several commenters responded to this question by urging the agencies to modify the third component of the repo-style transaction definition in accordance with the 2006 interagency securities borrowing rule.[72] Under the securities borrowing rule, the agencies accorded preferential risk-based capital treatment for cash-collateralized securities borrowing transactions that either met a bankruptcy standard such as the standard in criterion (iii) above or were overnight or unconditionally cancelable at any time by the bank. Commenters maintained that banks are able to terminate promptly a repo-style transaction with a counterparty whose financial condition is deteriorating so long as the transaction is done on an overnight basis or is unconditionally cancelable by the bank. As a result, these commenters contended that events of default and losses on such transactions are very rare.

The agencies have decided to modify the definition of repo-style transaction consistent with this suggestion by commenters and consistent with the 2006 securities borrowing rule. The agencies believe that this modification will resolve, in a manner that preserves safety and soundness, technical difficulties that banks would have had in meeting the proposed rule's

[71] This requirement is met where all transactions under the agreement (i) are executed under U.S. law and (ii) constitute ''securities contracts'' or ''repurchase agreements'' under section 555 or 559, respectively, of the Bankruptcy Code (11 U.S.C. 555 or 559), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or netting contracts between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407) or the Federal Reserve Board's Regulation EE (12 CFR part 231).

[72] 71 FR 8932, February 22, 2006.

definition for a material proportion of their repo-style transactions. Consistent with the 2006 securities borrowing rule, a reasonably short notice period, typically no more than the standard settlement period associated with the securities underlying the repo-style transaction, would not detract from the unconditionality of the bank's termination rights. With regard to overnight transactions, the counterparty generally should have no expectation, either explicit or implicit, that the bank will automatically roll over the transaction. The agencies are maintaining in substance all the other components of the proposed definition of repo-style transaction.

The proposed rule defined an eligible margin loan as an extension of credit where:

(i) The credit extension is collateralized exclusively by debt or equity securities that are liquid and readily marketable;

(ii) The collateral is marked to market daily and the transaction is subject to daily margin maintenance requirements;

(iii) The extension of credit is conducted under an agreement that provides the bank the right to accelerate and terminate the extension of credit and to liquidate or set off collateral promptly upon an event of default (including upon an event of bankruptcy, insolvency, or similar proceeding) of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions;[73] and

(iv) The bank has conducted and documented sufficient legal review to conclude with a well-founded basis that the agreement meets the requirements of paragraph (iii) of this definition and is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

Commenters generally supported this definition, but some objected to the prescriptiveness of criterion (iii). Criterion (iii) is necessary to ensure that a bank is quickly able to realize the value of its collateral in the event of obligor default. Collateral stayed by bankruptcy and not liquidated until a date far in the future is more appropriately reflected as a discounted positive cash flow in LGD estimation. Criterion (iii) is satisfied when the bank has conducted sufficient legal review to conclude with a well-founded basis (and has maintained sufficient written documentation of that legal review) that a margin loan would be exempt from the bankruptcy auto-stay. The agencies are therefore maintaining substantially the same definition of eligible margin loan in the final rule.

With the exception of repo-style transactions that are included in a bank's VaR-based measure under the market risk rule (as discussed above), for purposes of determining EAD for repo-style transactions, eligible margin loans, and OTC derivatives, and recognizing collateral mitigating the counterparty credit risk of such exposures, the final rule (consistent with the proposed rule) allows banks to take into account only financial collateral. The proposed rule defined financial collateral as collateral in the form of any of the following instruments in which the bank has a perfected, first priority security interest or the legal equivalent thereof: (i) Cash on deposit with the bank (including cash held for the bank by a third-party custodian or trustee); (ii) gold bullion; (iii) long-term debt securities that have an applicable external rating of one category below investment grade or higher (for example, at least BB–); (iv) short-term debt instruments that have an applicable external rating of at least investment grade (for example, at least A–3); (v) equity securities that are publicly traded; (vi) convertible bonds that are publicly traded; and (vii) mutual fund shares and money market mutual fund shares if a price for the shares is publicly quoted daily.

In connection with this definition, the agencies asked for comment on the appropriateness of requiring that a bank have a perfected, first priority security interest, or the legal equivalent thereof, in the definition of financial collateral. A couple of commenters supported this requirement, but several other commenters objected. The objecting commenters acknowledged that the requirement would generally be consistent with current U.S. collateral practices for repo-style transactions, eligible margin loans, and OTC derivatives, but they criticized the requirement on the grounds that: (i) Obtaining a perfected, first priority security interest may not be the current market practice outside the United States; (ii) U.S. practices may evolve in such a fashion as to not meet this requirement; and (iii) the requirement is not explicit in the New Accord. Other commenters asked the agencies to clarify that the requirement would be met for all or certain forms of collateral if the bank had possession and control of the collateral and a reasonable basis to believe it could promptly liquidate the collateral.

The agencies believe that in order to use the EAD adjustment approaches for exposures within the United States, a bank must have a perfected, first priority security interest in collateral, with the exception of cash on deposit with the bank and certain custodial arrangements. The agencies have modified the proposed requirement to address a concern raised by several commenters that a bank could fail to satisfy the first priority security interest requirement because of the senior security interest of a third-party custodian involved as an intermediary in the transaction. Under the final rule, a bank meets the security interest requirement so long as the bank has a perfected, first priority security interest in the collateral notwithstanding the prior security interest of any custodial agent. Outside of the United States, the definition of financial collateral can be satisfied as long as the bank has the legal equivalent of a perfected, first priority security interest. For example, cash on deposit with the bank is an example of the legal equivalent of a perfected, first priority security interest. The agencies intend to apply this ''legal equivalent'' standard flexibly to deal with non-U.S. collateral access regimes.

The agencies also invited comment on the extent to which assets that do not meet the definition of financial collateral are the basis of repo-style transactions engaged in by banks or are taken by banks as collateral for eligible margin loans or OTC derivatives. The agencies also inquired as to whether the definition of financial collateral should be expanded to reflect any other asset types.

A substantial number of commenters asked the agencies to add asset types to the list of financial collateral. The principal recommended additions included: (i) Non-investment-grade externally rated bonds; (ii) bonds that are not externally rated; (iii) all financial instruments; (iv) letters of credit; (v) mortgages loans; and (vi) certificates of deposit. Some commenters that advocated inclusion of a wider range of bonds admitted that it may be reasonable to impose some sort of liquidity requirement on the additional bonds and to impose a 25–50 percent standard supervisory haircut for such additional bonds. Some of the commenters that advocated inclusion of

[73] This requirement is met under the circumstances described in footnote 73. Under the U.S. Bankruptcy Code, ''margin loans'' are a type of securities contract, but the term ''margin loan'' does not encompass all loans that happen to be secured by securities collateral. Rather, Congress intended the term ''margin loan'' to include only those loans commonly known in the industry as margin loans, such as credit permitted in an account under the Board's Regulation T or where a financial intermediary extends credit for the purchase, sale, carrying, or trading of securities. *See* H.R. Rep. No. 109–131, at 119, 130 (2005).

a broader range of bonds and mortgages asserted that such inclusion would be warranted by the exemption from bankruptcy auto-stay accorded to repo-style transactions involving such assets by the U.S. Bankruptcy Code.[74]

As described above, to enhance international consistency and conform the final rule more closely to the New Accord, the agencies have decided to permit a bank to use the EAD approach for all repo-style transactions that are included in a bank's VaR-based measure under the market risk rule, regardless of the underlying collateral type. The agencies are satisfied that such repo-style transactions would be based on collateral that is sufficiently liquid to justify applying the EAD approach.

The agencies have included conforming residential mortgages in the definition of financial collateral and as acceptable underlying instruments in the definitions of repo-style transaction and eligible margin loan based on the liquidity of such mortgages and their widespread use as collateral in repo-style transactions. However, because this inclusion goes beyond the New Accord's recognition of financial collateral, the agencies decided to take a conservative approach and require banks to use the standard supervisory haircut approach, with a 25 percent haircut and minimum ten-business-day holding period, in order to recognize conforming residential mortgage collateral in EAD (other than for repo-style transactions that are included in a bank's VaR-based measure under the market risk rule). Use of the standard supervisory haircut approach for repo-style transactions, eligible margin loans, and OTC derivatives collateralized by conforming mortgages does not preclude a bank's use of the other EAD adjustment approaches for exposures collateralized by other types of financial collateral. Due to concerns about both competitive equity and the liquidity and price availability of other types of collateral, the agencies are not otherwise expanding the proposed definition of financial collateral in the final rule.

[74] 11 U.S.C. 559.

Collateral Haircut Approach

Under the collateral haircut approach of the final rule, similar to the proposed rule, a bank must set EAD equal to the sum of three quantities: (i) The value of the exposure less the value of the collateral; (ii) the absolute value of the net position in a given instrument or in gold (where the net position in a given instrument or in gold equals the sum of the current market values of the instrument or gold the bank has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current market values of that same instrument or gold the bank has borrowed, purchased subject to resale, or taken as collateral from the counterparty) multiplied by the market price volatility haircut appropriate to the instrument or gold; and (iii) the sum of the absolute values of the net position of any cash or instruments in each currency that is different from the settlement currency multiplied by the haircut appropriate to each currency mismatch. To determine the appropriate haircuts, a bank may choose to use standard supervisory haircuts or, with prior written approval from its primary Federal supervisor, its own estimates of haircuts.

In the preamble to the proposed rule, for purposes of the collateral haircut approach, the agencies clarified that a given security would include, for example, all securities with a single Committee on Uniform Securities Identification Procedures (CUSIP) number and would not include securities with different CUSIP numbers, even if issued by the same issuer with the same maturity date. The agencies sought comment on alternative approaches for determining a given security for purposes of the collateral haircut approach. A few commenters expressed support for the proposed CUSIP approach to defining a given security, but one commenter asked the agencies to permit each bank the flexibility to define given security. The collateral haircut approach in the final rule is based on a bank's net position in a ''given instrument or gold'' rather than in a ''given security'' to more precisely capture the positions to which a bank must apply the haircuts. To enhance safety and soundness and comparability across banks, the agencies believe that it is important to preserve the relatively clear CUSIP approach to defining a given instrument for purposes of the collateral haircut approach. Accordingly, the agencies are maintaining the CUSIP approach as appropriate for determining a given instrument for instruments that are securities.

Standard supervisory haircuts. Under the final rule, as under the proposed rule, if a bank chooses to use standard supervisory haircuts, it must use an 8 percent haircut for each currency mismatch and the haircut appropriate to each security in Table D below. These haircuts are based on the ten-business-day holding period for eligible margin loans and must be multiplied by the square root of ½ to convert the standard supervisory haircuts to the five-business-day minimum holding period for repo-style transactions. A bank must adjust the standard supervisory haircuts upward on the basis of a holding period longer than ten business days for eligible margin loans or five business days for repo-style transactions where and as appropriate to take into account the illiquidity of an instrument.

Table D – Standard Supervisory Market Price Volatility Haircuts

Applicable external rating grade category for debt securities	Residual maturity for debt securities	Issuers exempt from the 3 b.p. floor	Other issuers
Two highest investment-grade rating categories for long-term ratings/highest investment-grade rating category for short-term ratings	≤ 1 year	.005	.01
	>1 year, ≤ 5 years	.02	.04
	> 5 years	.04	.08
Two lowest investment-grade rating categories for both short- and long-term ratings	≤ 1 year	.01	.02
	>1 year, ≤ 5 years	.03	.06
	> 5 years	.06	.12
One rating category below investment grade	All	.15	.25
Main index equities[75] (including convertible bonds) and gold		.15	
Other publicly traded equities (including convertible bonds), conforming residential mortgages, and nonfinancial collateral		.25	
Mutual funds		Highest haircut applicable to any security in which the fund can invest	
Cash on deposit with the bank (including a certificate of deposit issued by the bank)		0	

As an example, assume a bank that uses standard supervisory haircuts has extended an eligible margin loan of $100 that is collateralized by five-year U.S. Treasury notes with a market value of $100. The value of the exposure less the value of the collateral would be zero, and the net position in the security ($100) times the supervisory haircut (.02) would be $2. There is no currency mismatch. Therefore, the EAD of the exposure would be $0 + $2 = $2.

Own estimates of haircuts. Under the final rule, as under the proposal, with the prior written approval of the bank's primary Federal supervisor, a bank may calculate security type and currency mismatch haircuts using its own internal estimates of market price volatility and foreign exchange volatility. The bank's primary Federal supervisor would base approval to use internally estimated haircuts on the satisfaction of certain minimum qualitative and quantitative standards. These standards include: (i) The bank must use a 99th percentile one-tailed confidence interval and a minimum five-business-day holding period for repo-style transactions and a minimum ten-business-day holding period for all other transactions; (ii) the bank must adjust holding periods upward where and as appropriate to take into account the illiquidity of an instrument; (iii) the bank must select a historical observation period for calculating haircuts of at least one year; and (iv) the bank must update its data sets and recompute haircuts no less frequently than quarterly and reassess data sets and haircuts whenever market prices change materially. A bank must estimate individually the volatilities of the exposure, the collateral, and foreign exchange rates, and may not take into account the correlations between them.

Under the final rule, as under the proposal, a bank that uses internally estimated haircuts must adhere to the following rules. The bank may calculate internally estimated haircuts for categories of debt securities that have an applicable external rating of at least investment grade. The haircut for a category of securities must be representative of the internal volatility estimates for securities in that category that the bank has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. In determining

[75] The proposed and final rules define a "main index" as the S&P 500 Index, the FTSE All-World Index, and any other index for which the bank demonstrates to the satisfaction of its primary Federal supervisor that the equities represented in the index have comparable liquidity, depth of market, and size of bid-ask spreads as equities in the S&P 500 Index and the FTSE All-World Index.

relevant categories, the bank must at a minimum take into account (i) the type of issuer of the security; (ii) the applicable external rating of the security; (iii) the maturity of the security; and (iv) the interest rate sensitivity of the security. A bank must calculate a separate internally estimated haircut for each individual debt security that has an applicable external rating below investment grade and for each individual equity security. In addition, a bank must internally estimate a separate currency mismatch haircut for each individual mismatch between each net position in a currency that is different from the settlement currency.

One commenter recommended that the agencies permit banks to use category-based internal estimate haircuts for non-investment-grade bonds and equity securities. The agencies have decided to adopt the proposed rule's provisions on category-based haircuts because they are consistent with the New Accord and because the volatilities of non-investment-grade bonds and of equity securities are more dependent on idiosyncratic, issuer-specific events than the volatility of investment-grade bonds.

Under the final rule, as under the proposal, when a bank calculates an internally estimated haircut on a T_N-day holding period, which is different from the minimum holding period for the transaction type, the bank must calculate the applicable haircut (H_M) using the following square root of time formula:

$$H_M = H_N \sqrt{\frac{T_M}{T_N}} ,$$

Where:

(i) T_M = five for repo-style transactions and ten for eligible margin loans;

(ii) T_N = holding period used by the bank to derive H_N; and

(iii) H_N = haircut based on the holding period T_N.

Simple VaR Methodology

As noted above, under the final rule, as under the proposal, a bank may use one of two internal models approaches to recognize the risk mitigating effects of financial collateral that secures a repo-style transaction or eligible margin loan. This section of the preamble describes the simple VaR methodology; a later section of the preamble describes the internal models methodology (which also may be used to determine the EAD for OTC derivative contracts). The agencies received no material comments on the simple VaR methodology and are adopting the methodology without change from the proposal.

With the prior written approval of its primary Federal supervisor, a bank may estimate EAD for repo-style transactions and eligible margin loans subject to a single product qualifying master netting agreement using a VaR model. Under the simple VaR methodology, a bank's EAD for the transactions subject to such a netting agreement is equal to the value of the exposures minus the value of the collateral plus a VaR-based estimate of potential future exposure (PFE). The value of the exposures is the sum of the current market values of all securities and cash the bank has lent, sold subject to repurchase, or posted as collateral to a counterparty under the netting set. The value of the collateral is the sum of the current market values of all securities and cash the bank has borrowed, purchased subject to resale, or taken as collateral from a counterparty under the netting set. The VaR-based estimate of PFE is an estimate of the bank's maximum exposure on the netting set over a fixed time horizon with a high level of confidence.

Specifically, the VaR model must estimate the bank's 99th percentile, one-tailed confidence interval for an increase in the value of the exposures minus the value of the collateral ($\Sigma E - \Sigma C$) over a five-business-day holding period for repo-style transactions or over a ten-business-day holding period for eligible margin loans using a minimum one-year historical observation period of price data representing the instruments that the bank has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral.

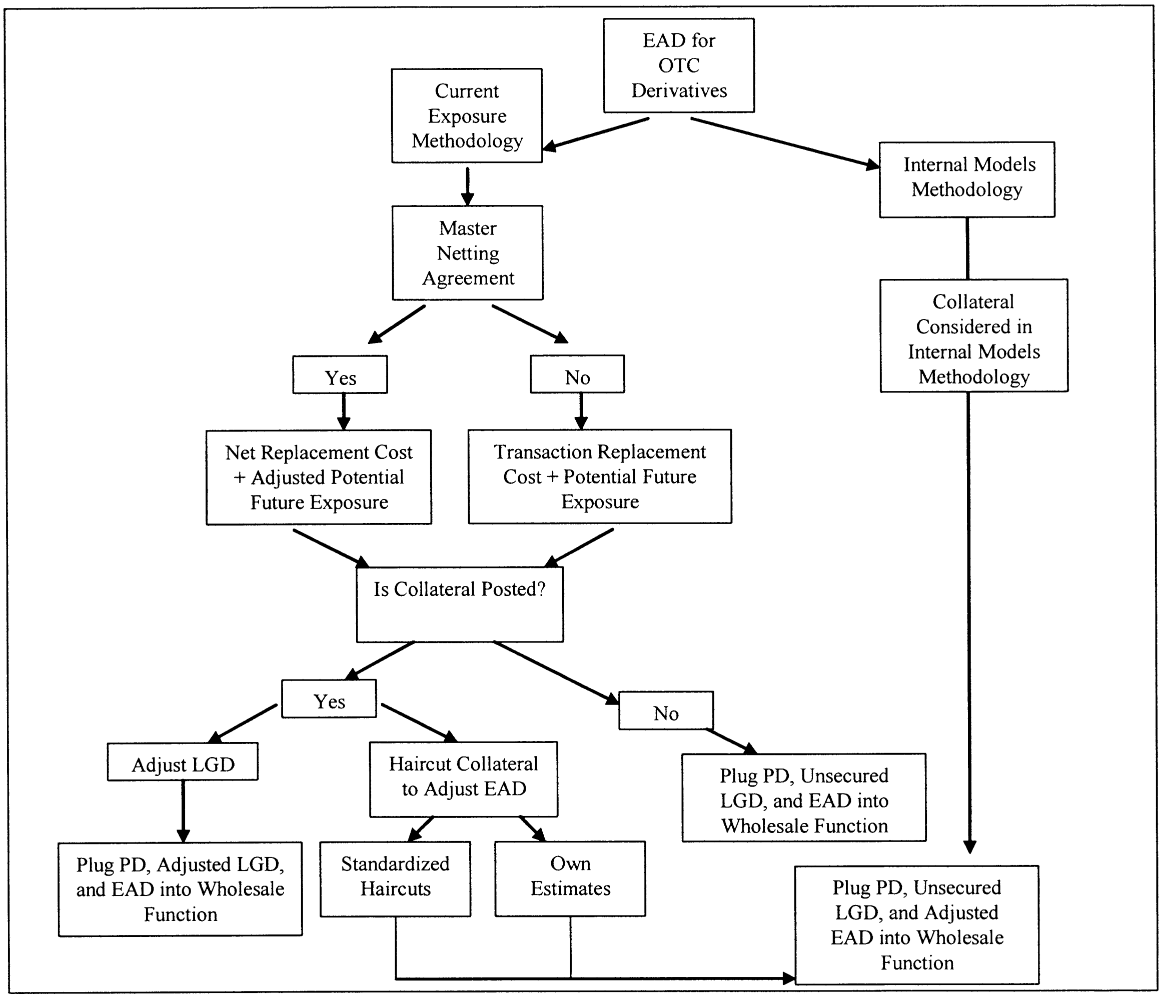
The qualification requirements for the use of a VaR model are less stringent than the qualification requirements for the internal models methodology described below. The main ongoing qualification requirement for using a VaR model is that the bank must validate its VaR model by establishing and maintaining a rigorous and regular backtesting regime.

3. EAD for OTC Derivative Contracts

Under the final rule, as under the proposed rule, a bank may use either the current exposure methodology or the internal models methodology to determine the EAD for OTC derivative contracts. An OTC derivative contract is defined as a derivative contract that is not traded on an exchange that requires the daily receipt and payment of cash-variation margin. A derivative contract is defined to include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivatives, and any other instrument that poses similar counterparty credit risks. The rule also defines derivative contracts to include unsettled securities, commodities, and foreign exchange trades with a contractual settlement or delivery lag that is longer than the normal settlement period (which the rule defines as the lesser of the market standard for the particular instrument or five business days). This includes, for example, agency mortgage-backed securities transactions conducted in the To-Be-Announced market.

Figure 3 illustrates the treatment of OTC derivative contracts.

Figure 3—EAD and LGD for OTC Derivative Contracts



Current Exposure Methodology

The final rule's current exposure methodology for determining EAD for single OTC derivative contracts is similar to the methodology in the general risk-based capital rules and is the same as the current exposure methodology in the proposal. Under the current exposure methodology, the EAD for an OTC derivative contract is equal to the sum of the bank's current credit exposure and PFE on the derivative contract. The current credit exposure for a single OTC derivative contract is the greater of the mark-to-market value of the derivative contract or zero.

The final rule's current exposure methodology for OTC derivative contracts subject to qualifying master netting agreements is also similar to the treatment in the agencies' general risk-based capital rules and, with one exception discussed below, is the same as the treatment in the proposal. Under the general risk-based capital rules and under the proposed rule, a bank could not recognize netting agreements for OTC derivative contracts for risk-based capital purposes unless it obtained a written and reasoned legal opinion representing that, in the event of a legal challenge, the bank's exposure would be found to be the net amount in the relevant jurisdictions.[76] The agencies asked for comment on methods banks would use to ensure enforceability of single product OTC derivative netting agreements in the absence of an explicit written legal opinion requirement.

Although one commenter supported the proposed rule's written legal opinion requirement, many other commenters asked the agencies to remove this requirement. These commenters maintained that, provided a transaction is conducted in a jurisdiction and with a counterparty type that is covered by a commissioned legal opinion, use of industry-developed standardized contracts for certain OTC derivative products and reliance on commissioned legal opinions as to the enforceability of these contracts should be a sufficient guarantor of enforceability. These commenters added that reliance on such commissioned legal opinions is standard market practice.

The agencies continue to believe that the legal enforceability of netting agreements is a necessary condition for a bank to recognize netting effects in its capital calculation. However, the agencies have conducted additional analysis and agree that a unique, written legal opinion is not necessary in all cases to ensure the enforceability of an OTC derivative netting agreement. Accordingly, the agencies have removed the requirement that a bank obtain a written and well reasoned legal opinion for each of its qualifying master netting agreements that cover OTC derivatives. As a result, under the final rule, to obtain netting treatment for multiple OTC derivative contracts subject to a qualifying master netting agreement, a

[76] This requirement was found in footnote 8 of the proposed rule text (in section 32(b)(2)).

bank must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement would provide termination netting benefits and is legal, valid, binding, and enforceable. In some cases, this requirement could be met by reasoned reliance on a commissioned legal opinion or an in-house counsel analysis. In other cases, however—for example, involving certain new derivative transactions or derivative counterparties in unusual jurisdictions—the bank would need to obtain an explicit written legal opinion from external or internal legal counsel addressing the particular situation.

The proposed rule's conversion factor (CF) matrix used to compute PFE was based on the matrices in the general risk-based capital rules, with two exceptions. First, under the proposed rule, the CF for credit derivatives that are not used to hedge the credit risk of exposures subject to an IRB credit risk capital requirement was specified to be 5.0 percent for contracts with investment-grade reference obligors and 10.0 percent for contracts with non-investment-grade reference obligors.[77] The CF for a credit derivative contract did not depend on the remaining maturity of the contract. The second change was that floating/floating basis swaps were no longer exempted from the CF for interest rate derivative contracts. The exemption was put into place when such swaps were very simple, and the agencies believed it was no longer appropriate given the evolution of the product. The computation of the PFE of multiple OTC derivative contracts subject to a qualifying master netting agreement did not change from the general risk-based capital rules. The agencies received no material comment on these provisions of the proposed rule and have adopted them as proposed.

Under the final rule, as under the proposed rule, if an OTC derivative contract is collateralized by financial collateral and a bank uses the current exposure methodology to determine EAD for the exposure, the bank must first determine an unsecured EAD as described above and in section 32(c) of the rule. To take into account the risk-reducing effects of the financial collateral, the bank may either adjust the LGD of the contract or, if the transaction is subject to daily marking-to-market and remargining, adjust the EAD of the contract using the collateral haircut approach for repo-style transactions and eligible margin loans described above and in section 32(b) of the rule.

Under part VI of the final rule, and of the proposed rule, a bank must treat an equity derivative contract as an equity exposure and compute a risk-weighted asset amount for that exposure. If the bank is using the internal models approach for its equity exposures, it also must compute a risk-weighted asset amount for its counterparty credit risk exposure on the equity derivative contract. However, if the bank is using the simple risk weight approach for its equity exposures, it may choose not to hold risk-based capital against the counterparty credit risk of the equity derivative contract. Likewise, a bank that purchases a credit derivative that is recognized under section 33 or 34 of the rule as a credit risk mitigant for an exposure that is not a covered position under the market risk rule does not have to compute a separate counterparty credit risk capital requirement for the credit derivative.[78] If a bank chooses not to hold risk-based capital against the counterparty credit risk of such equity or credit derivative contracts, it must do so consistently for all such equity derivative contracts or for all such credit derivative contracts. Further, where the contracts are subject to a qualifying master netting agreement, the bank must either include them all or exclude them all from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

In addition, where a bank provides protection through a credit derivative that is not treated as a covered position under the market risk rule, it must treat the credit derivative as a wholesale exposure to the reference obligor and compute a risk-weighted asset amount for the credit derivative under section 31 of the rule. The bank need not compute a counterparty credit risk capital requirement for the credit derivative, so long as it does so consistently for all such credit derivatives and either includes all or excludes all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes. Where the bank provides protection through a credit derivative treated as a covered position under the market risk rule, it must compute a counterparty credit risk capital requirement for the credit derivative under section 31 of the rule.

4. Internal Models Methodology

The final rule, like the proposed rule, includes an internal models methodology for the calculation of EAD for the counterparty credit exposure of OTC derivatives, eligible margin loans, and repo-style transactions. The internal models methodology requires a risk model that estimates EAD at the level of a netting set. A transaction not subject to a qualifying master netting agreement is considered to be its own netting set and a bank must calculate EAD for each such transaction individually.

A bank may use the internal models methodology for OTC derivatives (collateralized or uncollateralized) and single-product netting sets thereof, for eligible margin loans and single-product netting sets thereof, or for repo-style transactions and single-product netting sets thereof. A bank that uses the internal models methodology for a particular transaction type (that is, OTC derivative contracts, eligible margin loans, or repo-style transactions) must use the internal models methodology for all transactions of that transaction type. However, a bank may choose whether or not to use the internal models methodology for each transaction type.

A bank also may use the internal models methodology for OTC derivatives, eligible margin loans, and repo-style transactions subject to a qualifying cross-product master netting agreement if (i) the bank effectively integrates the risk mitigating effects of cross-product netting into its risk management and other information technology systems; and (ii) the bank obtains the prior written approval of its primary Federal supervisor.

The final rule tracks the proposed rule by defining a qualifying cross-product master netting agreement as a qualifying master netting agreement that provides for termination and close-out netting across multiple types of financial transactions or qualifying master netting agreements in the event of a counterparty's default, provided that:

(i) The underlying financial transactions are OTC derivative contracts, eligible margin loans, or repo-style transactions; and

[77] The counterparty credit risk of a credit derivative that is used to hedge the credit risk of an exposure subject to an IRB credit risk capital requirement is captured in the IRB treatment of the hedged exposure, as detailed in sections 33 and 34 of the proposed rule.

[78] The agencies recognize that there are reasons why a bank's credit portfolio might contain purchased credit protection on a reference name in a notional principal amount that exceeds the bank's currently measured EAD to that obligor. If the protection amount of the credit derivative is materially greater than the EAD of the exposure being hedged, however, the bank generally must treat the credit derivative as two separate exposures and calculate a counterparty credit risk capital requirement for the exposure that is not providing credit protection to the hedged exposure.

(ii) The bank obtains a written legal opinion verifying the validity and enforceability of the netting agreement under applicable law of the relevant jurisdictions if the counterparty fails to perform upon an event of default, including upon an event of bankruptcy, insolvency, or similar proceeding.

As discussed in the proposal, banks use several measures to manage their exposure to the counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivatives, including PFE, expected exposure (EE), and expected positive exposure (EPE). PFE is the maximum exposure estimated to occur over a future horizon at a high level of statistical confidence. Banks often use PFE when measuring counterparty credit risk exposure against counterparty credit limits. EE is the expected value of the probability distribution of non-negative credit risk exposures to a counterparty at any specified future date, whereas EPE is the time-weighted average of individual expected exposures estimated for a given forecasting horizon (one year in the proposed rule). The final rule clarifies that, when estimating EE, a bank must set any negative market values in the probability distribution of market values to a counterparty at a specified future date to zero to convert the probability distribution of market values to the probability distribution of credit risk exposures. Banks typically compute EPE, EE, and PFE using a common stochastic model.

A paper published by the BCBS in July 2005 titled ''The Application of Basel II to Trading Activities and the Treatment of Double Default Effects'' notes that EPE is an appropriate EAD measure for determining risk-based capital requirements for counterparty credit risk because transactions with counterparty credit risk ''are given the same standing as loans with the goal of reducing the capital treatment's influence on a firm's decision to extend an on-balance sheet loan rather than engage in an economically equivalent transaction that involves exposure to counterparty credit risk.'' [79] An adjustment to EPE, called ''effective EPE'' and described below, is used in the calculation of EAD under the internal models methodology. EAD is calculated as a multiple of effective EPE.

To address the concern that EE and EPE may not capture risk arising from the replacement of existing short-term positions over the one-year horizon used for capital requirements (rollover risk) or may underestimate the exposures of eligible margin loans, repo-style transactions, and OTC derivatives with short maturities, the final rule, like the proposed rule, uses a netting set's effective EPE as the basis for calculating EAD for counterparty credit risk. Consistent with the use of a one-year PD horizon, effective EPE is the time-weighted average of effective EE over one year where the weights are the proportion that an individual effective EE represents in a one-year time interval. If all contracts in a netting set mature before one year, effective EPE is the average of effective EE until all contracts in the netting set mature. For example, if the longest maturity contract in the netting set matures in six months, effective EPE would be the average of effective EE over six months.

Effective EE is defined as:

$$\text{Effective } EE_{tk} = \max(\text{Effective } EE_{tk-1}, EE_{tk})$$

where exposure is measured at future dates $t1, t2, t3$, * * * and effective EE_{t0} equals current exposure. Alternatively, a bank may use a measure that is more conservative than effective EPE for every counterparty (that is, a measure based on peak exposure) with prior approval of its primary Federal supervisor.

The final rule clarifies that if a bank hedges some or all of the counterparty credit risk associated with a netting set using an eligible credit derivative, the bank may take the reduction in exposure to the counterparty into account when estimating EE. If the bank recognizes this reduction in exposure to the counterparty in its estimate of EE, it must also use its internal model to estimate a separate EAD for the bank's exposure to the protection provider of the credit derivative.

The EAD for instruments with counterparty credit risk must be determined assuming economic downturn conditions. To accomplish this determination in a prudent manner, the internal models methodology sets EAD equal to EPE multiplied by a scaling factor termed ''alpha.'' Alpha is set at 1.4; a bank's primary Federal supervisor has the flexibility to raise this value based on the bank's specific characteristics of counterparty credit risk. In addition, with supervisory approval, a bank may use its own estimate of alpha, subject to a floor of 1.2.

In the proposal, the agencies requested comment on all aspects of the effective EPE approach to counterparty credit risk and, in particular, on the appropriateness of the monotonically increasing effective EE function, the alpha constant of 1.4, and the floor on internal estimates of alpha of 1.2. Commenters expressed a number of objections to the proposed rule's internal models methodology.

Several commenters contended that banks that use the internal models methodology should be permitted to calculate effective EPE at the counterparty level and should not be required to calculate effective EPE at the netting set level. These commenters indicated that while the New Accord mandates calculation at the netting set level, those banks that currently use an EPE-style approach to measuring counterparty credit risk for internal risk management purposes typically use a counterparty-by-counterparty EPE approach. They asserted that forcing banks to use a netting-set-by-netting-set approach would be burdensome for banks and would provide the agencies no material regulatory benefits, as netting effects are taken into account in the calculation of EE.

The agencies have retained the netting set focus of the calculation of effective EPE to preserve international consistency. The agencies will continue to review the implications, particularly with respect to the appropriate recognition of netting benefits, of allowing banks to calculate effective EPE at the counterparty level.

One commenter objected to the proposed rule's requirement that a bank use effective EE (as opposed to EE). This commenter contended that effective EE is an excessively conservative and imprecise mechanism to address rollover risk in a portfolio of short-term transactions. The commenter represented that rollover risk should be addressed under Pillar 2 rather than Pillar 1. The agencies continue to believe that rollover risk is a core credit risk that should be covered by explicit risk-based capital requirements. The agencies also remain concerned that EE and EPE (as opposed to effective EE and effective EPE) would not adequately incorporate rollover risk and do not believe that bank internal estimates of rollover risk are sufficiently reliable at this time to use for risk-based capital purposes. To ensure consistency with the New Accord and in light of the lack of alternative prudent mechanisms to incorporate rollover risk, the agencies continue to include effective EE and effective EPE in the final rule.

Several commenters criticized the default alpha of 1.4 and the 1.2 floor on internal estimates of alpha. These commenters contended that these supervisory alphas were too conservative for many dealer banks with large, diverse, and granular portfolios of repo-style transactions, eligible margin

[79] BCBS, ''The Application of Basel II to Trading Activities and the Treatment of Double Default Effects,'' July 2005, ¶ 15.

loans, and OTC derivatives. Although the agencies acknowledge the possibility that certain banks with certain types of portfolios at certain times could warrant an alpha of less than 1.2, the agencies believe it is important to have a supervisory floor on alpha. This floor will ensure consistency with the New Accord, comparability among the various banks that use the internal models methodology, and sufficient capital through the economic cycle for securities financing transactions and OTC derivatives. Therefore, the agencies are retaining the alpha floor as proposed.

Similar to the proposal, under the final rule a bank's primary Federal supervisor must determine that the bank meets certain qualifying criteria before the bank may use the internal models methodology. These criteria consist of the following operational requirements, modeling standards, and model validation requirements.

First, the bank must have the systems capability to estimate EE on a daily basis. While this requirement does not require the bank to report EE daily, or even estimate EE daily, the bank must demonstrate that it is capable of performing the estimation daily.

Second, the bank must estimate EE at enough future time points to accurately reflect all future cash flows of contracts in the netting set. To accurately reflect the exposure arising from a transaction, the model should incorporate those contractual provisions, such as reset dates, that can materially affect the timing, probability, or amount of any payment. The requirement reflects the need for an accurate estimate of EPE. However, in order to balance the ability to calculate exposures with the need for information on timely basis, the number of time points is not specified.

Third, the bank must have been using an internal model that broadly meets the minimum standards to calculate the distributions of exposures upon which the EAD calculation is based for a period of at least one year prior to approval. This requirement is to ensure that the bank has integrated the modeling into its counterparty credit risk management process.

Fourth, the bank's model must account for the non-normality of exposure distribution where appropriate. Non-normality of exposure distribution means high loss events occur more frequently than would be expected on the basis of a normal distribution, the statistical term for which is leptokurtosis. In many instances, there may not be a need to account for this. Expected exposures are much less likely to be affected by leptokurtosis than peak exposures or high percentile losses. However, the bank must demonstrate that its EAD measure is not affected by leptokurtosis or must account for it within the model.

Fifth, the bank must measure, monitor, and control the exposure to a counterparty over the whole life of all contracts in the netting set, in addition to accurately measuring and actively monitoring the current exposure to counterparties. The bank should exercise active management of both existing exposure and exposure that could change in the future due to market moves.

Sixth, the bank must be able to measure and manage current exposures gross and net of collateral held, where appropriate. The bank must estimate expected exposures for OTC derivative contracts both with and without the effect of collateral agreements. By contrast, under the proposed rule, a bank would have to measure and manage current exposure gross and net of collateral held. Some commenters criticized this requirement as inconsistent with the New Accord and bank internal risk management practices. The agencies agree and have revised the rule to only require a bank to ''be able to'' measure and manage current exposures gross and net of collateral.

Seventh, the bank must have procedures to identify, monitor, and control specific wrong-way risk throughout the life of an exposure. In this context, wrong-way risk is the risk that future exposure to a counterparty will be high when the counterparty's probability of default is also high. Wrong-way risk generally arises from events specific to the counterparty, rather than broad market downturns.

Eighth, the data used by the bank should be adequate for the measurement and modeling of the exposures. In particular, the model must use current market data to compute current exposures. When a bank uses historical data to estimate model parameters, the bank must use at least three years of data that cover a wide range of economic conditions. This requirement reflects the longer horizon for counterparty credit risk exposures compared to market risk exposures. The data must be updated at least quarterly or more frequently if market conditions warrant. Banks should consider using model parameters based on forward looking measures, where appropriate.

Ninth, the bank must subject its models used in the calculation of EAD to an initial validation and annual model review process. The model review should consider whether the inputs and risk factors, as well as the model outputs, are appropriate. The review of outputs should include a rigorous program of backtesting model outputs against realized exposures.

Maturity Under the Internal Models Methodology

Like corporate loan exposures, counterparty exposure on netting sets is susceptible to changes in economic value that stem from deterioration in the counterparty's creditworthiness short of default. The effective maturity parameter (M) reflects the impact of these changes on capital. The formula used to compute M for netting sets with maturities greater than one year must be different than that generally applied to wholesale exposures in order to reflect how counterparty credit exposures change over time. The final rule's definition of M under the internal models methodology is identical to that of the proposed rule and is based on a weighted average of expected exposures over the life of the transactions relative to their one year exposures. Consistent with the New Accord, the final rule expands upon the proposal by providing that a bank that uses an internal model to calculate a one-sided credit valuation adjustment may use the effective credit duration estimated by the model as M(EPE) in place of the formula in the paragraph below.

If the remaining maturity of the exposure or the longest-dated contract contained in a netting set is greater than one year, the bank must set M for the exposure or netting set equal to the lower of 5 years or M(EPE), where:

$$\text{(i) } M(EPE) = 1 + \frac{\sum_{t_k > 1\,year}^{maturity} EE_k \times \Delta t_k \times df_k}{\sum_{k=1}^{t_k \le 1\,year} effectiveEE_k \times \Delta t_k \times df_k}$$

and (ii) df_k is the risk-free discount factor for future time period t_k. The cap of five years on M is consistent with the treatment of wholesale exposures under section 31 of the rule.

If the remaining maturity of the exposure or the longest-dated contract in the netting set is one year or less, the bank must set M for the exposure or netting set equal to one year except as provided in section 31(d)(7) of the rule. In this case, repo-style transactions, eligible margin loans, and collateralized OTC derivative transactions subject to daily remargining agreements may use the effective maturity of the longest maturity transaction in the netting set as M.

Collateral Agreements Under the Internal Models Methodology

The provisions of the final rule on collateral agreements under the internal models methodology are the same as those of the proposed rule. Under the final rule, if a bank has prior written approval from its primary Federal supervisor, it may capture within its internal model the effect on EAD of a collateral agreement that requires receipt of collateral when exposure to the counterparty increases. In no circumstances, however, may a bank take into account in EAD collateral agreements triggered by deterioration of counterparty credit quality. Several commenters asked the agencies to permit banks to incorporate in EAD collateral agreements that are dependent on a decline in the external rating of the counterparty. The agencies do not believe that banks are able to model the necessary correlations with sufficient reliability to accept these types of collateral agreements under the internal models methodology at this time.

In the context of the internal models methodology, the rule defines a collateral agreement as a legal contract that: (i) Specifies the time when, and circumstances under which, the counterparty is required to exchange collateral with the bank for a single financial contract or for all financial contracts covered under a qualifying master netting agreement; and (ii) confers upon the bank a perfected, first priority security interest (notwithstanding the prior security interest of any custodial agent), or the legal equivalent thereof, in the collateral posted by the counterparty under the agreement. This security interest must provide the bank with a right to close out the financial positions and the collateral upon an event of default of or failure to perform by the counterparty under the collateral agreement. A contract would not satisfy this requirement if the bank's exercise of rights under the agreement may be stayed or avoided under applicable law in the relevant jurisdictions.

If a bank's internal model does not capture the effects of collateral agreements, the final rule provides a ''shortcut'' method to provide the bank with some benefit, in the form of a smaller EAD, for collateralized counterparties. Under the shortcut method, effective EPE is the lesser of a threshold amount (linked to the exposure amount at which a counterparty must post collateral) plus an add-on and effective EPE without a collateral agreement. Although any bank may use this ''shortcut'' method under the internal models methodology, the agencies expect banks that make extensive use of collateral agreements to develop the modeling capacity to measure the impact of such agreements on EAD. The shortcut method provided in the final rule is identical to the shortcut method provided in the proposed rule.

Alternative Methods

Under the final rule, consistent with the proposed rule, a bank using the internal models methodology may use an alternative method to determine EAD for certain transactions, provided that the bank can demonstrate to its primary Federal supervisor that the method's output is more conservative than an alpha of 1.4 (or higher) times effective EPE.

Use of an alternative method may be appropriate where a new product or business line is being developed, where a recent acquisition has occurred, or where the bank believes that other more conservative methods to measure counterparty credit risk for a category of transactions are prudent. The alternative method should be applied to all similar transactions. When an alternative method is used, the bank should either treat the particular transactions concerned as a separate netting set with the counterparty or apply the alternative model to the entire original netting set.

The agencies recognize that for new OTC derivative products a bank may need a transition period during which to incorporate a new product into its internal models methodology or to demonstrate that an alternative method is more conservative than an alpha of 1.4 (or higher) times effective EPE. The final rule therefore provides that for material portfolios of new OTC derivative products, a bank may assume that the current exposure methodology in section 32(c) of the rule meets the conservatism requirement for a period not longer than 180 days. As a general matter, the agencies expect that the current exposure methodology in section 32(c) of the rule would be an acceptable, more conservative method for immaterial portfolios of OTC derivatives.

5. Guarantees and Credit Derivatives That Cover Wholesale Exposures

The New Accord specifies that a bank may adjust either the PD or the LGD of a wholesale exposure to reflect the risk mitigating effects of a guarantee or credit derivative. Similarly, under the final rule, as under the proposed rule, a bank may choose either a PD substitution or an LGD adjustment approach to recognize the risk mitigating effects of an eligible guarantee or eligible credit derivative on a wholesale exposure (or in certain circumstances may choose to use a double default treatment, as discussed below). In all cases a bank must use the same risk parameters for calculating ECL for a wholesale exposure as it uses for calculating the risk-based capital requirement for the exposure. Moreover, in all cases, a bank's ultimate PD and LGD for the hedged wholesale exposure may not be lower than the PD and LGD floors discussed above and described in section 31(d) of the rule.

Eligible Guarantees and Eligible Credit Derivatives

Under the proposed rule, guarantees and credit derivatives had to meet specific eligibility requirements to be recognized as CRM for a wholesale exposure. The proposed rule defined an eligible guarantee as a guarantee that:

(i) Is written and unconditional;

(ii) Covers all or a pro rata portion of all contractual payments of the obligor on the reference exposure;

(iii) Gives the beneficiary a direct claim against the protection provider;

(iv) Is non-cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;

(v) Is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced; and

(vi) Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligor on the reference exposure without first requiring the beneficiary to demand payment from the obligor.

Commenters suggested a number of improvements to the proposed definition of eligible guarantee. One commenter asked the agencies to clarify that the unconditionality requirement in criterion (i) of the definition would be interpreted consistently with the New Accord's requirement that ''there should be no clause in the protection contract outside the direct control of the bank that could prevent the protection provider from being obliged to pay out in a timely manner in the event that the original counterparty fails to make the payment(s) due.'' [80] The agencies are not providing the requested clarification. The agencies have acquired considerable experience in the intricate issue of the conditionality of guarantees under the general risk-based capital rules and intend to address the meaning of ''unconditional'' in the context of eligible guarantees under this final rule on a case-by-case basis going forward.

This same commenter also asked the agencies to revise the second criterion of the definition from coverage of ''all or a pro rata portion of all contractual payments of the obligor on the reference exposure'' to coverage of ''all or a pro rata portion of all principal or due and payable amounts on the reference exposure.'' The agencies have decided to preserve the second criterion of the eligible guarantee definition without change to ensure that a bank only obtains CRM benefits from credit risk mitigants that cover all sources of credit exposure to the obligor. Although it is appropriate to provide partial CRM benefits under the wholesale framework for partial but pro rata guarantees of all contractual payments, the agencies are less comfortable with providing partial CRM benefits under the wholesale framework where the extent of the loss coverage of the credit exposure is not so easily quantifiable. Accordingly, for example, if a bank obtains a principal-only or interest-only guarantee of a corporate bond, the guarantee will not qualify as an eligible guarantee and the bank will not be able to obtain any CRM benefits from the guarantee.

Some commenters asked the agencies to modify the fourth criterion of the eligible guarantee definition to clarify, consistent with the New Accord, that a guarantee that is terminable by the bank and the protection provider by mutual consent may qualify as an eligible guarantee. This is an appropriate clarification of the definition and, therefore, the agencies have amended the fourth criterion of the definition to require that the guarantee be non-cancelable by the protection provider unilaterally.

One commenter asked the agencies to modify the fifth criterion of the eligible guarantee definition, which requires the guarantee to be legally enforceable in a jurisdiction where the protection provider has sufficient assets, by deleting the word ''sufficient.'' The agencies have preserved the fifth criterion of the proposed definition intact. The agencies do not think that it would be consistent with safety and soundness to permit a bank to obtain CRM benefits under the rule if the guarantee were not legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient available assets.

Finally, some commenters objected to the sixth and final criterion of the eligible guarantee definition, which requires the protection provider to make payments to the beneficiary upon default of the obligor without first requiring the beneficiary to demand payment from the obligor. The agencies have decided to modify this criterion to make it more consistent with the New Accord and actual market practice. The final rule's sixth criterion requires only that the guarantee permit the bank to obtain payment from the protection provider in the event of an obligor default in a timely manner and without first having to take legal actions to pursue the obligor for payment.

The agencies also have performed additional analysis and review of the definition of eligible guarantee and have decided to add two additional criteria to the definition. The first additional criterion prevents guarantees from certain affiliated companies from being eligible guarantees. Under the final rule, a guarantee will not be an eligible guarantee if the protection provider is an affiliate of the bank (other than an affiliated depository institution, bank, securities broker or dealer, or insurance company that does not control the bank and that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies). For purposes of the definition, an affiliate of a bank is defined as a company that controls, is controlled by, or is under common control with, the bank. Control of a company is defined as (i) ownership, control, or holding with power to vote 25 percent or more of a class of voting securities of the company; or (ii) consolidation of the company for financial reporting purposes.

The strong correlations among the financial conditions of affiliated parties would typically render guarantees from affiliates of the bank of little value precisely when the bank would need them most—when the bank itself is in financial distress.[81] For example, a guarantee that a bank might receive from its parent shell bank holding company would provide little credit risk mitigation to the bank as the bank approached insolvency because the financial condition of the holding company would depend critically on the financial health of the subsidiary bank. Moreover, the holding company typically would experience no increase in its regulatory capital requirement for issuing the guarantee because the guarantee would be on behalf of a consolidated subsidiary and would be eliminated in the consolidation of the holding company's financial statements.[82]

The agencies have decided, however, that a bank should be able to recognize CRM benefits by obtaining a guarantee from an affiliated insured depository institution, bank, securities broker or dealer, or insurance company that does not control the bank and that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies (as the case may be). A

[80] New Accord, ¶189.

[81] This concern of the agencies is the same concern that led the agencies to exclude from the definition of tier 1 capital any instrument that has credit-sensitive features—such as an interest rate or dividend rate that increases as the credit quality of the bank issuer declines or an investor put right that is triggered by a decline in issuer credit quality. *See, e.g.*, 12 CFR part 208, appendix A, section II.A.1.b.

[82] Although the Board's Regulation W places strict quantitative and qualitative limits on guarantees issued by a bank on behalf of an affiliate, it does not restrict all guarantees issued by an affiliate on behalf of a bank. *See, e.g.*, 12 CFR 223.3(e).

depository institution for this purpose includes all subsidiaries of the depository institution except financial subsidiaries. The final rule recognizes guarantees from these types of affiliates because they are financial institutions subject to prudential regulation by national or state supervisory authorities. The agencies expect that the prudential regulation of the affiliate would help prevent the affiliate from exposing itself excessively to the credit exposures of the bank. Similarly, these affiliates would be subject to regulatory capital requirements of their own and should experience an increase in their regulatory capital requirements for issuing the guarantee.

The second additional criterion precludes a guarantee from eligible guarantee status if the guarantee increases the beneficiary's cost of credit protection in response to deterioration in the credit quality of the reference exposure. This additional criterion is consistent with the New Accord's treatment of guarantees and with the proposed rule's operational requirements for synthetic securitizations.

The proposed rule defined an eligible credit derivative as a credit derivative in the form of a credit default swap, n^{th}-to-default swap, or total return swap provided that:

(i) The contract meets the requirements of an eligible guarantee and has been confirmed by the protection purchaser and the protection provider;

(ii) Any assignment of the contract has been confirmed by all relevant parties;

(iii) If the credit derivative is a credit default swap or n^{th}-to-default swap, the contract includes the following credit events:

(A) Failure to pay any amount due under the terms of the reference exposure (with a grace period that is closely in line with the grace period of the reference exposure); and

(B) Bankruptcy, insolvency, or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due, and similar events;

(iv) The terms and conditions dictating the manner in which the contract is to be settled are incorporated into the contract;

(v) If the contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(vi) If the contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of the exposure provide that any required consent to transfer may not be unreasonably withheld;

(vii) If the credit derivative is a credit default swap or n^{th}-to-default swap, the contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event; and

(viii) If the credit derivative is a total return swap and the bank records net payments received on the swap as net income, the bank records offsetting deterioration in the value of the hedged exposure (either through reductions in fair value or by an addition to reserves).

Commenters generally supported the proposed rule's definition of eligible credit derivative, but two commenters asked for a series of changes. These commenters asked that the final rule specifically reference contingent credit default swaps (CCDSs) in the list of eligible forms of credit derivatives. CCDS are a relatively new type of credit derivative, and the agencies are still considering their appropriate role within the risk-based capital rules. However, to enable the rule to adapt to future market innovations, the agencies have revised the definition of eligible credit derivative to add to the list of eligible credit derivative forms ''any other form of credit derivative approved by'' the bank's primary Federal supervisor.[83]

One commenter asked that the agencies amend the third criterion of the eligible credit derivative definition, which applies to credit default swaps and n^{th}-to-default swaps. The commenter indicated that standard practice in the credit derivatives market is for a credit default swap to contain provisions that exempt the protection provider from making default payments to the protection purchaser if the reference obligor's failure to pay is in an amount below a de minimis threshold. The agencies do not believe that safety and soundness would be materially impaired by conforming this criterion of the eligible credit derivative definition to the current standard market practice. Under the final rule, therefore, a credit derivative will satisfy the definition of an eligible credit derivative if the protection provider's obligation to make default payments to the protection purchaser is triggered only if the reference obligor's failure to pay exceeds any applicable minimal payment threshold that is consistent with standard market practice.

Finally, a commenter asked for clarification of the meaning of the sixth criterion of the definition of eligible credit derivative, which states that if the contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of the exposure provide that any required consent to transfer may not be unreasonably withheld. To address any potential ambiguity about which exposure's transferability must be analyzed, the agencies have amended the sixth component to read: ''If the contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract must provide that any required consent to transfer may not be unreasonably withheld.''

The proposed rule also provided that a bank may recognize an eligible credit derivative that hedges an exposure that is different from the credit derivative's reference exposure used for determining the derivative's cash settlement value, deliverable obligation, or occurrence of a credit event only if:

(i) The reference exposure ranks pari passu (that is, equal) or junior to the hedged exposure; and

(ii) The reference exposure and the hedged exposure are exposures to the same legal entity, and legally enforceable cross-default or cross-acceleration clauses are in place.

One commenter acknowledged that the proposal's pari passu ceiling is consistent with the New Accord but asked for clarification that the provision only requires reference exposure equality or subordination with respect to priority of payments. Although the agencies have concluded that it is not necessary to amend the rule to provide this clarification, the agencies agree that the pari passu ceiling relates to priority of payments only.

Two commenters also asked the agencies to provide an exception to the cross-default/cross-acceleration requirement where the hedged exposure is an OTC derivative contract or a qualifying master netting agreement that covers OTC derivative contracts.

[83] One commenter also asked the agencies to clarify that a bank should translate the phrase ''beneficiary'' in the definition of eligible guarantee to ''protection purchaser'' when confirming that a credit derivative meets all the requirements of the definition of eligible guarantee. The agencies have not amended the rule to address this point, but do confirm that such translation is appropriate.

Although some parts of the debt markets have incorporated obligations from OTC derivative contracts in cross-default/cross-acceleration clauses, the commenter asserted that the practice is not prevalent in many parts of the market. In addition, the commenter maintained that, unlike a failure to pay on a loan or a bond, failure to pay on an OTC derivative contract generally would not trigger a credit event with respect to the reference exposure of the credit default swap. The agencies have not made this change. The proposed cross-default/cross-acceleration requirement is consistent with the New Accord. In addition, the agencies are reluctant to permit a bank to obtain CRM benefits for an exposure hedged by a credit derivative whose reference exposure is different than the hedged exposure unless the hedged and reference exposures would default simultaneously. If the hedged exposure could default prior to the default of the reference exposure, the bank may suffer losses on the hedged exposure and not be able to collect default payments on the credit derivative. The final rule clarifies that, in order to recognize the credit risk mitigation benefits of an eligible credit derivative, cross-default/cross-acceleration provisions must assure payments under the credit derivative are triggered if the obligor fails to pay under the terms of the hedged exposure.

PD Substitution Approach

Under the PD substitution approach of the final rule, as under the proposal, if the protection amount (as defined below) of the eligible guarantee or eligible credit derivative is greater than or equal to the EAD of the hedged exposure, a bank may substitute for the PD of the hedged exposure the PD associated with the rating grade of the protection provider. If the bank determines that full substitution leads to an inappropriate degree of risk mitigation, the bank may substitute a higher PD for that of the protection provider.

If the guarantee or credit derivative provides the bank with the option to receive immediate payout on triggering the protection, then the bank must use the lower of the LGD of the hedged exposure (not adjusted to reflect the guarantee or credit derivative) and the LGD of the guarantee or credit derivative. If the guarantee or credit derivative does not provide the bank with the option to receive immediate payout on triggering the protection (and instead provides for the guarantor to assume the payment obligations of the obligor over the remaining life of the hedged exposure), the bank must use the LGD of the guarantee or credit derivative.

If the protection amount of the eligible guarantee or eligible credit derivative is less than the EAD of the hedged exposure, however, the bank must treat the hedged exposure as two separate exposures (protected and unprotected) to recognize the credit risk mitigation benefit of the guarantee or credit derivative. The bank must calculate its risk-based capital requirement for the protected exposure under section 31 of the rule (using a PD equal to the protection provider's PD, an LGD determined as described above, and an EAD equal to the protection amount of the guarantee or credit derivative). If the bank determines that full substitution leads to an inappropriate degree of risk mitigation, the bank may use a higher PD than that of the protection provider. The bank must calculate its risk-based capital requirement for the unprotected exposure under section 31 of the rule (using a PD equal to the obligor's PD, an LGD equal to the hedged exposure's LGD not adjusted to reflect the guarantee or credit derivative, and an EAD equal to the EAD of the original hedged exposure minus the protection amount of the guarantee or credit derivative).

The protection amount of an eligible guarantee or eligible credit derivative is defined as the effective notional amount of the guarantee or credit derivative reduced by any applicable haircuts for maturity mismatch, lack of restructuring, and currency mismatch (each described below). The effective notional amount of a guarantee or credit derivative is the lesser of the contractual notional amount of the credit risk mitigant and the EAD of the hedged exposure, multiplied by the percentage coverage of the credit risk mitigant. For example, the effective notional amount of a guarantee that covers, on a pro rata basis, 40 percent of any losses on a $100 bond would be $40.

The agencies received no material comments on the above-described structure of the PD substitution approach, and the final rule's PD substitution approach is substantially the same as that of the proposed rule.

LGD Adjustment Approach

Under the LGD adjustment approach of the final rule, as under the proposal, if the protection amount of the eligible guarantee or eligible credit derivative is greater than or equal to the EAD of the hedged exposure, the bank's risk-based capital requirement for the hedged exposure is the greater of (i) the risk-based capital requirement for the exposure as calculated under section 31 of the rule (with the LGD of the exposure adjusted to reflect the guarantee or credit derivative); or (ii) the risk-based capital requirement for a direct exposure to the protection provider as calculated under section 31 of the rule (using the bank's PD for the protection provider, the bank's LGD for the guarantee or credit derivative, and an EAD equal to the EAD of the hedged exposure).

If the protection amount of the eligible guarantee or eligible credit derivative is less than the EAD of the hedged exposure, however, the bank must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative. The bank's risk-based capital requirement for the protected exposure would be the greater of (i) the risk-based capital requirement for the protected exposure as calculated under section 31 of the rule (with the LGD of the exposure adjusted to reflect the guarantee or credit derivative and EAD set equal to the protection amount of the guarantee or credit derivative); or (ii) the risk-based capital requirement for a direct exposure to the protection provider as calculated under section 31 of the rule (using the bank's PD for the protection provider, the bank's LGD for the guarantee or credit derivative, and an EAD set equal to the protection amount of the guarantee or credit derivative). The bank must calculate its risk-based capital requirement for the unprotected exposure under section 31 of the rule using a PD set equal to the obligor's PD, an LGD set equal to the hedged exposure's LGD (not adjusted to reflect the guarantee or credit derivative), and an EAD set equal to the EAD of the original hedged exposure minus the protection amount of the guarantee or credit derivative.

The agencies received no material comments on the above-described structure of the LGD adjustment approach, and the final rule's LGD adjustment approach is substantially the same as that of the proposed rule.

The PD substitution approach allows a bank to effectively assess risk-based capital against a hedged exposure as if it were a direct exposure to the protection provider, and the LGD adjustment approach produces a risk-based capital requirement for a hedged exposure that is never lower than that of a direct exposure to the protection provider. Accordingly, these approaches do not fully reflect the risk mitigation benefits certain types of guarantees and credit derivatives may provide because the resulting risk-based capital requirement does not consider the joint probability of default of the obligor of the hedged exposure and the protection provider, sometimes referred to as the ''double default'' benefit. The agencies have decided, consistent with the New Accord and the proposed rule, to recognize double default benefits in the wholesale framework only for certain hedged exposures covered by certain guarantees and credit derivatives. A later section of the preamble describes which hedged exposures are eligible for the double default treatment and describes the double default treatment that is available to those exposures.

Maturity Mismatch Haircut

Under the final rule, a bank that seeks to reduce the risk-based capital requirement on a wholesale exposure by recognizing an eligible guarantee or eligible credit derivative must adjust the effective notional amount of the credit risk mitigant downward to reflect any maturity mismatch between the hedged exposure and the credit risk mitigant. A maturity mismatch occurs when the residual maturity of a credit risk mitigant is less than that of the hedged exposure(s).

The proposed rule provided, consistent with the New Accord, that when the hedged exposures have different residual maturities, the longest residual maturity of any of the hedged exposures would be used as the residual maturity of all hedged exposures. One commenter criticized this provision as excessively conservative. The agencies agree and have decided to restrict the application of this provision to securitization CRM.[84] Accordingly, under the final rule, to calculate the risk-based capital requirement for a group of hedged wholesale exposures that are covered by a single eligible guarantee under which the protection provider has agreed to backstop all contractual payments associated with each hedged exposure, a bank should treat each hedged exposure as if it were fully covered by a separate eligible guarantee. To determine whether any of the hedged wholesale exposures has a maturity mismatch with the eligible guarantee, the bank must assess whether the residual maturity of the eligible guarantee is less than that of the hedged exposure.

The residual maturity of a hedged exposure is the longest possible remaining time before the obligor is scheduled to fulfil its obligation on the exposure. When determining the residual maturity of the guarantee or credit derivative, embedded options that may reduce the term of the credit risk mitigant must be taken into account so that the shortest possible residual maturity for the credit risk mitigant is used to determine the potential maturity mismatch. Where a call is at the discretion of the protection provider, the residual maturity of the guarantee or credit derivative is the first call date. If the call is at the discretion of the bank purchasing the protection, but the terms of the arrangement at inception of the guarantee or credit derivative contain a positive incentive for the bank to call the transaction before contractual maturity, the remaining time to the first call date is the residual maturity of the credit risk mitigant. For example, where there is a step-up in the cost of credit protection in conjunction with a call feature or where the effective cost of protection increases over time even if credit quality remains the same or improves, the residual maturity of the credit risk mitigant is the remaining time to the first call.

Eligible guarantees and eligible credit derivatives with maturity mismatches may only be recognized if their original maturities are equal to or greater than one year. As a result, a guarantee or credit derivative is not recognized for a hedged exposure with an original maturity of less than one year unless the credit risk mitigant has an original maturity of equal to or greater than one year or an effective residual maturity equal to or greater than that of the hedged exposure. In all cases, credit risk mitigants with maturity mismatches may not be recognized when they have an effective residual maturity of three months or less.

When a maturity mismatch exists, a bank must apply the following maturity mismatch adjustment to determine the effective notional amount of the guarantee or credit derivative adjusted for maturity mismatch: $Pm = E \times (t-0.25)/(T-0.25)$, where:

(i) Pm = effective notional amount of the credit risk mitigant adjusted for maturity mismatch;

(ii) E = effective notional amount of the credit risk mitigant;

(iii) t = lesser of T or effective residual maturity of the credit risk mitigant, expressed in years; and

(iv) T = lesser of 5 or effective residual maturity of the hedged exposure, expressed in years.

Other than as discussed above with respect to pools of hedged exposures with different residual maturities, the final rule's provisions on maturity mismatch do not differ from those of the proposed rule.

Restructuring Haircut

Under the final rule, as under the proposed rule, a bank that seeks to recognize an eligible credit derivative that does not include a distressed restructuring as a credit event that triggers payment under the derivative must reduce the recognition of the credit derivative by 40 percent. A distressed restructuring is a restructuring of the hedged exposure involving forgiveness or postponement of principal, interest, or fees that results in a charge-off, specific provision, or other similar debit to the profit and loss account.

In other words, the effective notional amount of the credit derivative adjusted for lack of restructuring credit event (and maturity mismatch, if applicable) is: $Pr = Pm \times 0.60$, where:

(i) Pr = effective notional amount of the credit risk mitigant, adjusted for lack of restructuring credit event (and maturity mismatch, if applicable); and

(ii) Pm = effective notional amount of the credit risk mitigant adjusted for maturity mismatch (if applicable).

Two commenters opposed the 40 percent restructuring haircut. One commenter contended that the 40 percent haircut is too punitive. The other commenter contended that the 40 percent haircut should not apply when the hedged exposure is an OTC derivative contract or a qualifying master netting agreement that covers OTC derivative contracts. The 40 percent haircut is a rough estimate of the reduced CRM benefits that accrue to a bank that purchases a credit derivative without restructuring coverage. Nonetheless, the agencies recognize that restructuring events could result in substantial economic losses to a bank. Moreover, the 40 percent haircut is consistent with the New Accord and is a reasonably prudent mechanism for ensuring that banks do not receive excessive CRM benefits for purchasing credit protection that does not cover all material sources of economic loss to the bank on the hedged exposure.

The final rule's provisions on lack of restructuring as a credit event do not differ from those of the proposed rule.

[84] Under the final rule, if an eligible guarantee provides *tranched* credit protection to a group of hedged exposures—for example, the guarantee covers the first 2 percent of aggregate losses for the group—the bank must determine the risk-based capital requirements for the hedged exposures under the securitization framework.

Currency Mismatch Haircut

Under the final rule, as under the proposed rule, where the eligible guarantee or eligible credit derivative is denominated in a currency different from that in which any hedged exposure is denominated, the effective notional amount of the guarantee or credit derivative must be adjusted for currency mismatch (and maturity mismatch and lack of restructuring credit event, if applicable). The adjusted effective notional amount is calculated as: $Pc = Pr \times (1 - Hfx)$, where:

(i) Pc = effective notional amount of the credit risk mitigant, adjusted for currency mismatch (and maturity mismatch and lack of restructuring credit event, if applicable);

(ii) Pr = effective notional amount of the credit risk mitigant (adjusted for maturity mismatch and lack of restructuring credit event, if applicable); and

(iii) Hfx = haircut appropriate for the currency mismatch between the credit risk mitigant and the hedged exposure.

A bank may use a standard supervisory haircut of 8 percent for Hfx (based on a ten-business-day holding period and daily marking-to-market and remargining). Alternatively, a bank may use internally estimated haircuts for Hfx based on a ten-business-day holding period and daily marking-to-market and remargining if the bank qualifies to use the own-estimates haircuts in paragraph (b)(2)(iii) of section 32, the simple VaR methodology in paragraph (b)(3) of section 32, or the internal models methodology in paragraph (d) of section 32 of the rule. The bank must scale these haircuts up using a square root of time formula if the bank revalues the guarantee or credit derivative less frequently than once every ten business days.

The agencies received no comments on the currency mismatch provisions discussed above, and the final rule's provisions on currency mismatch do not differ from those of the proposed rule.

Example

Assume that a bank holds a five-year $100 corporate exposure, purchases a $100 credit derivative to mitigate its credit risk on the exposure, and chooses to use the PD substitution approach. The unsecured LGD of the corporate exposure is 30 percent; the LGD of the credit derivative is 80 percent. The credit derivative is an eligible credit derivative, has the bank's exposure as its reference exposure, has a three-year maturity, no restructuring provision, no currency mismatch with the bank's hedged exposure, and the protection provider assumes the payment obligations of the obligor upon default. The effective notional amount and initial protection amount of the credit derivative would be $100. The maturity mismatch would reduce the protection amount to $\$100 \times (3 - .25) \div (5 - .25)$ or $57.89. The haircut for lack of restructuring would reduce the protection amount to $\$57.89 \times 0.6$ or $34.74. So the bank would treat the $100 corporate exposure as two exposures: (i) An exposure of $34.74 with the PD of the protection provider, an LGD of 80 percent, and an M of five; and (ii) an exposure of $65.26 with the PD of the obligor, an LGD of 30 percent, and an M of five.

Multiple Credit Risk Mitigants

The New Accord provides that if multiple credit risk mitigants (for example, two eligible guarantees) cover a single exposure, a bank must disaggregate the exposure into portions covered by each credit risk mitigant (for example, the portion covered by each guarantee) and must calculate separately the risk-based capital requirement of each portion.[85] The New Accord also indicates that when credit risk mitigants provided by a single protection provider have differing maturities, they should be subdivided into separate layers of protection.[86] In the proposal, the agencies invited comment on whether and how the agencies should address these and other similar situations in which multiple credit risk mitigants cover a single exposure.

Commenters generally agreed that the agencies should provide additional guidance about how to address situations where multiple credit risk mitigants cover a single exposure. Although one commenter recommended that the agencies permit banks effectively to recognize triple default benefits in situations where two credit risk mitigants cover a single exposure, commenters did not provide material specific suggestions as to their preferred approach to addressing these situations. Thus, the agencies have decided to adopt the New Accord's principles for dealing with multiple credit risk mitigant situations. The agencies have added several additional provisions to section 33(a) of the final rule to provide clarity in this area.

Double Default Treatment

As noted above, the final rule, like the proposed rule, contains a separate risk-based capital methodology for hedged exposures eligible for double default treatment. The final rule's double default provisions are identical to those of the proposed rule, with the exception of some limited changes to the definition of an eligible double default guarantor discussed below.

To be eligible for double default treatment, a hedged exposure must be fully covered or covered on a pro rata basis (that is, there must be no tranching of credit risk) by an uncollateralized single-reference-obligor credit derivative or guarantee (or certain n^{th}-to-default credit derivatives) provided by an eligible double default guarantor (as defined below). Moreover, the hedged exposure must be a wholesale exposure other than a sovereign exposure.[87] In addition, the obligor of the hedged exposure must not be an eligible double default guarantor, an affiliate of an eligible double default guarantor, or an affiliate of the guarantor.

The proposed rule defined eligible double default guarantor to include a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)); a bank holding company (as defined in section 2 of the Bank Holding Company Act (12 U.S.C. 1841)); a savings and loan holding company (as defined in 12 U.S.C. 1467a) provided all or substantially all of the holding company's activities are permissible for a financial holding company under 12 U.S.C. 1843(k)); a securities broker or dealer registered (under the Securities Exchange Act of 1934) with the Securities and Exchange Commission (SEC); an insurance company in the business of providing credit protection (such as a monoline bond insurer or re-insurer) that is subject to supervision by a state insurance regulator; a foreign bank (as defined in section 211.2 of the Federal Reserve Board's Regulation K (12 CFR 211.2)); a non-U.S. securities firm; or a non-U.S. based insurance company in the business of providing credit protection. The proposal required an eligible double default guarantor to (i) have a bank-assigned PD that, at the time the guarantor issued the guarantee or credit derivative, was equal to or lower than the PD associated with a long-term external rating of at least the third highest investment-grade rating category; and (ii) have a current bank-assigned PD that is equal to or lower than the PD associated with a long-term external rating of at least investment grade. In addition, the proposal permitted a non-U.S. based bank, securities firm, or insurance company to qualify as an eligible double default guarantor only if the firm were subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities firms, or insurance companies (as the case may be) or had issued an

[85] New Accord, ¶206.

[86] *Id.*

[87] The New Accord permits certain retail small business exposures to be eligible for double default treatment. Under the final rule, however, a bank must effectively desegment a retail small business exposure (thus rendering it a wholesale exposure) to make it eligible for double default treatment.

outstanding and unsecured long-term debt security without credit enhancement that had a long-term applicable external rating in one of the three highest investment-grade rating categories.

Commenters expressed two principal criticisms of the proposed definition of an eligible double default guarantor. First, commenters asked the agencies to conform the definition to the New Accord by permitting a foreign financial firm to qualify so long as it had an outstanding long-term debt security with an external rating of investment grade or higher (for example, BBB− or higher) instead of in one of the three highest investment-grade rating categories (for example, A− or higher). In light of the other eligibility criteria, the agencies have concluded that it would be appropriate to conform this provision of the definition to the New Accord.

Commenters also requested that the agencies conform the definition of eligible double default guarantor to the New Accord by permitting a financial firm to qualify so long as it had a bank-assigned PD, at the time the guarantor issued the guarantee or credit derivative or at any time thereafter, that was equal to or lower than the PD associated with a long-term external rating of at least the third highest investment-grade rating category. In light of the other eligibility criteria, the agencies have concluded that it would be appropriate to conform this provision of the definition to the New Accord.

Effectively, under the final rule, the scope of an eligible double default guarantor is limited to financial firms whose normal business includes the provision of credit protection, as well as the management of a diversified portfolio of credit risk. This restriction arises from the agencies' concern to limit double default recognition to financial institutions that have a high level of credit risk management expertise and that provide sufficient market disclosure. The restriction is also designed to limit the risk of excessive correlation between the creditworthiness of the guarantor and the obligor of the hedged exposure due to their performance depending on common economic factors beyond the systematic risk factor. As a result, hedged exposures to potential credit protection providers or affiliates of credit protection providers are not eligible for the double default treatment. In addition, the agencies have excluded hedged exposures to sovereign entities from eligibility for double default treatment because of the potential high correlation between the creditworthiness of a sovereign and that of a guarantor.

One commenter urged the agencies to delete the requirement that the obligor of a hedged exposure that qualifies for double default treatment not be an eligible double default guarantor or an affiliate of such an entity. This commenter represented that this requirement significantly constrained the scope of application of double default treatment and assumed inappropriately that there is an excessive amount of correlation among all financial firms. The agencies acknowledge that this requirement is a crude mechanism to prevent excessive wrong-way risk, but the agencies have decided to retain the requirement in light of its consistency with the New Accord and the limited ability of banks to measure accurately correlations among obligors.

In addition to limiting the types of guarantees, credit derivatives, guarantors, and hedged exposures eligible for double default treatment, the rule limits wrong-way risk further by requiring a bank to implement a process to detect excessive correlation between the creditworthiness of the obligor of the hedged exposure and the protection provider. The bank must receive prior written approval from its primary Federal supervisor for this process in order to recognize double default benefits for risk-based capital purposes. To apply double default treatment to a particular hedged exposure, the bank must determine that there is not excessive correlation between the creditworthiness of the obligor of the hedged exposure and the protection provider. For example, the creditworthiness of an obligor and a protection provider would be excessively correlated if the obligor derives a high proportion of its income or revenue from transactions with the protection provider. If excessive correlation is present, the bank may not use the double default treatment for the hedged exposure.

The risk-based capital requirement for a hedged exposure subject to double default treatment is calculated by multiplying a risk-based capital requirement for the hedged exposure (as if it were unhedged) by an adjustment factor that considers the PD of the protection provider (see section 34 of the rule). Thus, the PDs of both the obligor of the hedged exposure and the protection provider are factored into the hedged exposure's risk-based capital requirement. In addition, as under the PD substitution treatment in section 33 of the rule, the bank is allowed to set LGD equal to the lower of the LGD of the hedged exposure (not adjusted to reflect the guarantee or credit derivative) or the LGD of the guarantee or credit derivative if the guarantee or credit derivative provides the bank with the option to receive immediate payout on the occurrence of a credit event. Otherwise, the bank must set LGD equal to the LGD of the guarantee or credit derivative. Accordingly, in order to apply the double default treatment, the bank must estimate a PD for the protection provider and an LGD for the guarantee or credit derivative. Finally, a bank using the double default treatment must make applicable adjustments to the protection amount of the guarantee or credit derivative to reflect maturity mismatches, currency mismatches, and lack of restructuring coverage (as under the PD substitution and LGD adjustment approaches in section 33 of the rule).

One commenter objected that the calibration of the double default formula under the proposed rule was too conservative because it assumed an excessive amount of correlation between the obligor of the hedged exposure and the protection provider. The agencies have decided to leave the calibration unaltered in light of its consistency with the New Accord. The agencies will evaluate this decision over time and will raise this issue with the BCBS if appropriate.

6. Guarantees and Credit Derivatives That Cover Retail Exposures

Like the proposal, the final rule provides a different treatment for guarantees and credit derivatives that cover retail exposures than for those that cover wholesale exposures. The approach set forth above for guarantees and credit derivatives that cover wholesale exposures is an exposure-by-exposure approach consistent with the overall exposure-by-exposure approach the rule takes to wholesale exposures. The agencies believe that a different treatment for guarantees that cover retail exposures is necessary and appropriate because of the rule's segmentation approach to retail exposures. The approaches to retail guarantees described in this section generally apply only to guarantees of individual retail exposures. Guarantees of multiple retail exposures (such as pool private mortgage insurance (PMI)) are typically tranched (that is, they cover less than the full amount of the hedged exposures) and, therefore, are securitization exposures under the final rule.

The rule does not specify the ways in which guarantees and credit derivatives may be taken into account in the segmentation of retail exposures.

Likewise, the rule does not explicitly limit the extent to which a bank may take into account the credit risk mitigation benefits of guarantees and credit derivatives in its estimation of the PD and LGD of retail segments, except by the application of overall floors on certain PD and LGD assignments. This approach has the principal advantage of being relatively easy for banks to implement—the approach generally would not disrupt the existing retail segmentation practices of banks and would not interfere with banks' quantification of PD and LGD for retail segments.

In the proposal, the agencies expressed some concern, however, that this approach would provide banks with substantial discretion to incorporate double default and double recovery effects. To address these concerns, the preamble to the proposed rule described two possible alternative treatments for guarantees of retail exposures. The first alternative distinguished between eligible retail guarantees and all other (non-eligible) guarantees of retail exposures. Under this alternative, an eligible retail guarantee would be an eligible guarantee that applies to a single retail exposure and is (i) PMI issued by a highly creditworthy insurance company; or (ii) issued by a sovereign entity or a political subdivision of a sovereign entity.

Under this alternative, a bank would be able to recognize the credit risk mitigation benefits of eligible retail guarantees that cover retail exposures in a segment by adjusting its estimates of LGD for the segment to reflect recoveries from the guarantor. However, the bank would have to estimate the PD of a segment without reflecting the benefit of guarantees. Specifically, a segment's PD would be an estimate of the stand-alone probability of default for the retail exposures in the segment, before taking account of any guarantees. Accordingly, for this limited set of traditional guarantees of retail exposures by high credit quality guarantors, a bank would be allowed to recognize the benefit of the guarantee when estimating LGD but not when estimating PD.

This alternative approach would provide a different treatment for non-eligible retail guarantees. In short, within the retail framework, a bank would not be able to recognize non-eligible retail guarantees when estimating PD and LGD for any segment of retail exposures. A bank would be required to estimate PD and LGD for segments containing retail exposures with non-eligible guarantees as if the exposures were not guaranteed. However, a bank would be permitted to recognize non-eligible retail guarantees provided by a wholesale guarantor by treating the hedged retail exposure as a direct exposure to the guarantor and applying the appropriate wholesale IRB risk-based capital formula. In other words, for retail exposures covered by non-eligible retail guarantees, a bank would be permitted to reflect the guarantee by ''desegmenting'' the retail exposures (which effectively would convert the retail exposures into wholesale exposures) and then applying the rules set forth above for guarantees that cover wholesale exposures. Thus, under this approach, a bank would not be allowed to recognize either double default or double recovery effects for non-eligible retail guarantees.

A second alternative that the agencies described in the preamble to the proposed rule would permit a bank to recognize the credit risk mitigation benefits of all eligible guarantees (whether eligible retail guarantees or not) that cover retail exposures by adjusting its estimates of LGD for the relevant segments, but would subject a bank's risk-based capital requirement for a segment of retail exposures that are covered by one or more non-eligible retail guarantees to a floor. Under this second alternative, the agencies could impose a floor on risk-based capital requirements of between 2 percent and 6 percent on such a segment of retail exposures.

A substantial number of commenters supported the flexible approach in the text of the proposed rule. A few commenters also supported the first alternative approach in the preamble of the proposed rule. Commenters uniformly urged the agencies not to adopt the second alternative approach. The agencies have decided to adopt the approach to retail guarantees in the text of the proposed rule and not to adopt either alternative approach described in the proposed rule preamble. Although the first alternative approach addresses prudential concerns, the agencies have concluded that it is excessively conservative and prescriptive and would not harmonize with banks' internal risk measurement and management practices. The agencies also have determined that the second alternative approach is insufficiently risk sensitive and is not consistent with the New Accord. In light of the final rule's flexible approach to retail guarantees, the agencies expect banks to limit their use of guarantees in the retail segmentation process and retail risk parameter estimation process to situations where the bank has particularly reliable data about the CRM benefits of such guarantees.

D. Unsettled Securities, Foreign Exchange, and Commodity Transactions

Section 35 of the final rule describes the risk-based capital requirements for unsettled and failed securities, foreign exchange, and commodities transactions. The agencies did not receive any material comments on this aspect of the proposed rule and are adopting it as proposed.

Under the final rule, certain transaction types are excluded from the scope of section 35, including:

(i) Transactions accepted by a qualifying central counterparty that are subject to daily marking-to-market and daily receipt and payment of variation margin (which do not have a risk-based capital requirement); [88]

(ii) Repo-style transactions (the risk-based capital requirements of which are determined under sections 31 and 32 of the final rule);

(iii) One-way cash payments on OTC derivative contracts (the risk-based capital requirements of which are determined under sections 31 and 32 of the final rule); and

(iv) Transactions with a contractual settlement period that is longer than the normal settlement period (defined below), which transactions are treated as OTC derivative contracts and assessed a risk-based capital requirement under sections 31 and 32 of the final rule. The final rule also provides that, in the case of a system-wide failure of a settlement or clearing system, the bank's primary Federal supervisor may waive risk-based capital requirements for unsettled and failed transactions until the situation is rectified.

The final rule contains separate treatments for delivery-versus-payment (DvP) and payment-versus-payment (PvP) transactions with a normal settlement period, on the one hand, and non-DvP/non-PvP transactions with a normal settlement period, on the other hand. The final rule provides the following definitions of a DvP transaction, a PvP transaction, and a normal settlement period. A DvP transaction is a securities or commodities transaction in which the buyer is obligated to make payment only if the seller has made delivery of the securities or commodities and the seller is obligated to deliver the securities or commodities only if the buyer has made payment. A PvP transaction is a foreign exchange transaction in which each counterparty is obligated to make a final

[88] The agencies consider a qualifying central counterparty to be the functional equivalent of an exchange, and have long exempted exchange-traded contracts from risk-based capital requirements.

transfer of one or more currencies only if the other counterparty has made a final transfer of one or more currencies. A transaction has a normal settlement period if the contractual settlement period for the transaction is equal to or less than the market standard for the instrument underlying the transaction and equal to or less than five business days.

A bank must hold risk-based capital against a DvP or PvP transaction with a normal settlement period if the bank's counterparty has not made delivery or payment within five business days after the settlement date. The bank must determine its risk-weighted asset amount for such a transaction by multiplying the positive current exposure of the transaction for the bank by the appropriate risk weight in Table E. The positive current exposure of a transaction of a bank is the difference between the transaction value at the agreed settlement price and the current market price of the transaction, if the difference results in a credit exposure of the bank to the counterparty.

TABLE E.—RISK WEIGHTS FOR UNSETTLED DVP AND PVP TRANSACTIONS

Number of business days after contractual settlement date	Risk weight to be applied to positive current exposure (percent)
From 5 to 15	100
From 16 to 30	625
From 31 to 45	937.5
46 or more	1,250

A bank must hold risk-based capital against any non-DvP/non-PvP transaction with a normal settlement period if the bank has delivered cash, securities, commodities, or currencies to its counterparty but has not received its corresponding deliverables by the end of the same business day. The bank must continue to hold risk-based capital against the transaction until the bank has received its corresponding deliverables. From the business day after the bank has made its delivery until five business days after the counterparty delivery is due, the bank must calculate its risk-based capital requirement for the transaction by treating the current market value of the deliverables owed to the bank as a wholesale exposure.

For purposes of computing a bank's risk-based capital requirement for unsettled non-DvP/non-PvP transactions, a bank may assign an internal obligor rating to a counterparty for which it is not otherwise required under the final rule to assign an obligor rating on the basis of the applicable external rating of any outstanding unsecured long-term debt security without credit enhancement issued by the counterparty. A bank may estimate a loss severity rating or LGD for the exposure, or may use a 45 percent LGD for the exposure provided the bank uses the 45 percent LGD for all such exposures (that is, for all non-DvP/non-PvP transactions subject to a risk-based capital requirement other than deduction under section 35 of the final rule). Alternatively, a bank may use a 100 percent risk weight for all non-DvP/non-PvP transactions subject to a risk-based capital requirement other than deduction under section 35 of the final rule.

If, in a non-DvP/non-PvP transaction with a normal settlement period, the bank has not received its deliverables by the fifth business day after counterparty delivery was due, the bank must deduct the current market value of the deliverables owed to the bank 50 percent from tier 1 capital and 50 percent from tier 2 capital.

The total risk-weighted asset amount for unsettled transactions equals the sum of the risk-weighted asset amount for each DvP and PvP transaction with a normal settlement period and the risk-weighted asset amount for each non-DvP/non-PvP transaction with a normal settlement period.

E. Securitization Exposures

This section describes the framework for calculating risk-based capital requirements for securitization exposures (the securitization framework). In contrast to the framework for wholesale and retail exposures, the securitization framework does not permit a bank to rely on its internal assessments of the risk parameters of a securitization exposure.[89] For securitization exposures, which typically are tranched exposures to a pool of underlying exposures, such assessments would require implicit or explicit estimates of correlations among the losses on the underlying exposures and estimates of the credit risk-transfering consequences of tranching. Such correlation and tranching effects are difficult to estimate and validate in an objective manner and on a going-forward basis. Instead, the securitization framework relies principally on two sources of information, where available, to determine risk-based capital requirements: (i) An assessment of the securitization exposure's credit risk made by a nationally recognized statistical rating organization (NRSRO); or (ii) the risk-based capital requirement for the underlying exposures as if the exposures had not been securitized (along with certain other objective information about the securitization exposure, such as the size and relative seniority of the exposure).

[89] Although the IAA described below does allow a bank to use an internal-ratings-based approach to determine its risk-based capital requirement for an exposure to an ABCP program, banks are required to follow NRSRO rating criteria and therefore are required implicitly to use the NRSRO's determination of the correlation of the underlying exposures in the ABCP program.

1. Hierarchy of Approaches

The securitization framework contains three general approaches for determining the risk-based capital requirement for a securitization exposure: a ratings-based approach (RBA), an internal assessment approach (IAA), and a supervisory formula approach (SFA). Consistent with the New Accord and the proposal, under the final rule a bank generally must apply the following hierarchy of approaches to determine the risk-based capital requirement for a securitization exposure.

Gains-on-Sale and CEIOs

Under the proposed rule, a bank would deduct from tier 1 capital any after-tax gain-on-sale resulting from a securitization and would deduct from total capital any portion of a CEIO that does not constitute a gain-on-sale, as described in section 42(a)(1) and (c) of the proposed rule. Thus, if the after-tax gain-on-sale associated with a securitization equaled $100 while the amount of CEIOs associated with that same securitization equaled $120, the bank would deduct $100 from tier 1 capital and $20 from total capital ($10 from tier 1 capital and $10 from tier 2 capital).

Several commenters asserted that the proposed deductions of gains-on-sale and CEIOs were excessively conservative, because such deductions are not reflected in an originating bank's maximum risk-based capital requirement associated with a single securitization transaction (described below). Commenters noted that while securitization does not increase an originating bank's overall risk exposure to the securitized assets, in some circumstances the proposal would result in a securitization transaction increasing an originating bank's risk-based capital requirement. To address this concern, some commenters suggested deducting CEIOs from total capital only when the CEIOs constitute a gain-on-sale. Others urged adopting the treatment of CEIOs in the general risk-based capital rules. Under this treatment, the entire amount of CEIOs beyond a concentration threshold is deducted from total capital and there is no separate gain-on-sale deduction.

The final rule retains the proposed deduction of gains-on-sale and CEIOs. These deductions are consistent with the New Accord, and the agencies believe they are warranted given historical supervisory concerns with the subjectivity involved in valuations of gains-on-sale and CEIOs. Furthermore, although the treatments of gains-on-sale and CEIOs can increase an originating bank's risk-based capital requirement following a securitization, the agencies believe that such anomalies will be rare where a securitization transfers significant credit risk from the originating bank to third parties.

Ratings-Based Approach (RBA)

If a securitization exposure is not a gain-on-sale or CEIO, a bank must apply the RBA to a securitization exposure if the exposure qualifies for the RBA. As a general matter, an exposure qualifies for the RBA if the exposure has an external rating from an NRSRO or has an inferred rating (that is, the exposure is senior to another securitization exposure in the transaction that has an external rating from an NRSRO).[90] For example, a bank generally must use the RBA approach to determine the risk-based capital requirement for an asset-backed security that has an applicable external rating of AA+ from an NRSRO and for another tranche of the same securitization that is unrated but senior in all respects to the asset-backed security that was rated. In this example, the senior unrated tranche would be treated as if it were rated AA+.

Internal Assessment Approach (IAA)

If a securitization exposure does not qualify for the RBA but the exposure is to an ABCP program—such as a credit enhancement or liquidity facility—the bank may apply the IAA (if the bank, the exposure, and the ABCP program qualify for the IAA) or the SFA (if the bank and the exposure qualify for the SFA) to the exposure. As a general matter, a bank will qualify to use the IAA if the bank establishes and maintains an internal risk rating system for exposures to ABCP programs that has been approved by the bank's primary Federal supervisor. Alternatively, a bank may use the SFA if the bank is able to calculate a set of risk factors relating to the securitization, including the risk-based capital requirement for the underlying exposures as if they were held directly by the bank. A bank that qualifies for and chooses to use the IAA must use the IAA for all exposures that qualify for the IAA.

A number of commenters asserted that a bank should be permitted to use the IAA for a securitization exposure to an ABCP conduit even when the exposure has an inferred rating, provided all other IAA eligibility criteria were met. The commenters maintained that the RBA would produce an excessive risk-based capital requirement for an unrated securitization exposure, such as a liquidity facility, when the inferred rating is based on a rated security that is very junior to the unrated exposure. Commenters suggested that allowing a bank to use the IAA instead of the RBA in such circumstances would lead to a risk-based capital requirement that was better aligned with the unrated exposure's actual risk.

Like the New Accord, the final rule does not allow a bank to use the IAA for securitization exposures that qualify for the RBA based on an inferred rating. While in some cases the IAA might produce a more risk-sensitive capital treatment relative to an inferred rating under the RBA, the agencies—as well as the majority of commenters—believe that it is important to retain as much consistency as possible with the New Accord to provide a level international playing field for financial services providers in a competitive line of business. The commenters' concerns relating to inferred ratings apply only to a small proportion of outstanding ABCP liquidity facilities. In many cases, a bank may mitigate such concerns by having the ABCP program issue an additional, intermediate layer of externally rated securities, which would provide a more accurate reference for inferring a rating on the unrated liquidity facility. The agencies intend to monitor developments in this area and, as appropriate, will coordinate any reassessment of the hierarchy of securitization approaches with the BCBS and other supervisory and regulatory authorities.

Supervisory Formula Approach (SFA)

If a securitization exposure is not a gain-on-sale or a CEIO, does not qualify for the RBA, and is not an exposure to an ABCP program for which the bank is applying the IAA, the bank may apply the SFA to the exposure if the bank is able to calculate the SFA risk parameters for the securitization. In many cases, an originating bank would use the SFA to determine its risk-based capital requirements for retained securitization exposures.

Deduction

If a securitization exposure is not a gain-on-sale or a CEIO and does not qualify for the RBA, the IAA, or the SFA, the bank must deduct the exposure from total capital.

Numerous commenters requested an alternative to deducting the securitization exposure from capital. Some of these commenters noted that if a bank does not service the underlying assets, the bank may not be able to produce highly accurate estimates of a key SFA risk parameter, K_{IRB}, which is the risk-based capital requirement as if the underlying assets were held directly by the bank. Commenters expressed concern that, under the proposal, a bank would be required to deduct from capital some structured lending products that have long histories of low credit losses. Commenters maintained that a bank should be allowed to calculate the securitization exposure's risk-based capital requirement using the rules for wholesale exposures or using an IAA-like approach under which the bank's internal risk rating for the exposure would be mapped into an NRSRO's rating category.

Like the proposal, the final rule contains only those securitization approaches in the New Accord. As already noted, the agencies—and most commenters—believe that it is important to minimize substantive differences between the final rule and the New Accord to foster international consistency. Furthermore, the agencies believe that the hierarchy of securitization approaches is sufficiently comprehensive to accommodate demonstrably low-risk structured lending arrangements in a risk-sensitive manner. As described in greater detail below, for securitization exposures that are not eligible for the RBA or the IAA, a bank has flexibility under the SFA to tailor its procedures for estimating K_{IRB} to the data that are available. The agencies recognize that, in light of data shortcomings, a bank may have to use approaches to estimating K_{IRB} that are less sophisticated than what the bank might use for similar assets that it originates, services, and holds directly. Supervisors generally will review the reasonableness of K_{IRB} estimates in the context of available data, and will expect estimates of K_{IRB} to incorporate appropriate conservatism to address any data shortcomings.

Total risk-weighted assets for securitization exposures equals the sum of risk-weighted assets calculated under the RBA, IAA, and SFA, plus any risk-

[90] A securitization exposure held by an originating bank must have two or more external ratings or inferred ratings to qualify for the RBA.

weighted asset amounts calculated under the early amortization provisions in section 47 of the final rule.

Exceptions to the General Hierarchy of Approaches

Consistent with the New Accord and the proposed rule, the final rule includes a mechanism that generally prevents a bank's effective risk-based capital requirement from increasing as a result of the bank securitizing its assets. Specifically, the rule limits a bank's effective risk-based capital requirement for all of its securitization exposures to a single securitization to the applicable risk-based capital requirement if the underlying exposures were held directly by the bank. Under the rule, unless one or more of the underlying exposures does not meet the definition of a wholesale, retail, securitization, or equity exposure, the total risk-based capital requirement for all securitization exposures held by a single bank associated with a single securitization (including any regulatory capital requirement that relates to an early amortization provision, but excluding any capital requirements that relate to the bank's gain-on-sale or CEIOs associated with the securitization) cannot exceed the sum of (i) the bank's total risk-based capital requirement for the underlying exposures as if the bank directly held the underlying exposures; and (ii) the bank's total ECL for the underlying exposures.

One commenter urged the agencies to delete the reference to ECL in the capital calculation. However, the agencies believe it is appropriate to include the ECL of the underlying exposures in this calculation because ECL is included in the New Accord's limit, and because the bank would have had to estimate the ECL of the exposures and hold reserves or capital against the ECL if the bank held the underlying exposures on its balance sheet.

This maximum risk-based capital requirement is different from the general risk-based capital rules. Under the general risk-based capital rules, banks generally are required to hold a dollar in capital for every dollar in residual interest, regardless of the effective risk-based capital requirement on the underlying exposures. The agencies adopted this dollar-for-dollar capital treatment for a residual interest to recognize that in many instances the relative size of the residual interest retained by the originating bank reveals market information about the quality of the underlying exposures and transaction structure that may not have been captured under the general risk-based capital rules. Given the significantly heightened risk sensitivity of the IRB approach, the agencies believe that the maximum risk-based capital requirement in the final rule is appropriate.

The securitization framework also includes provisions to limit the double counting of risks in situations involving overlapping securitization exposures. While the proposal addressed only those overlapping exposures arising in the context of exposures to ABCP programs and mortgage loan swaps with recourse, the final rule addresses overlapping exposures for securitizations more generally. If a bank has multiple securitization exposures that provide duplicative coverage of the underlying exposures of a securitization (such as when a bank provides a program-wide credit enhancement and multiple pool-specific liquidity facilities to an ABCP program), the bank is not required to hold duplicative risk-based capital against the overlapping position. Instead, the bank would apply to the overlapping position the applicable risk-based capital treatment under the securitization framework that results in the highest capital requirement. If different banks have overlapping exposures to a securitization, however, each bank must hold capital against the entire maximum amount of its exposure. Although duplication of capital requirements will not occur for individual banks, some systemic duplication may occur where multiple banks have overlapping exposures to the same securitization.

The proposed rule also addressed the risk-based capital treatment of a securitization of non-IRB assets. Claims to future music concert and film receivables are examples of financial assets that are not wholesale, retail, securitization, or equity exposures. In these cases, the SFA cannot be used because of the absence of a risk-sensitive measure of the credit risk of the underlying exposures. Specifically, under the proposed rule, if a bank had a securitization exposure and any underlying exposure of the securitization was not a wholesale, retail, securitization or equity exposure, the bank would (i) apply the RBA if the securitization exposure qualifies for the RBA and is not gain-on-sale or a CEIO; or (ii) otherwise, deduct the exposure from total capital.

Numerous commenters asserted that a bank should be allowed to use the IAA in these situations since, unlike the SFA, the IAA is tied to NRSRO rating methodologies rather than to the risk-based capital requirement for the underlying exposures. The agencies believe that this is a reasonable approach for exposures to ABCP conduits. The final rule permits a bank to use the IAA for a securitization exposure for which any underlying exposure of the securitization is not a wholesale, retail, securitization or equity exposure, provided the securitization exposure is not gain-on-sale, not a CEIO, and not eligible for the RBA, and all of the IAA qualification criteria are met.

As described in section V.A.3. of this preamble, a few commenters asserted that OTC derivatives with a securitization SPE as the counterparty should be excluded from the definition of securitization exposure. These commenters objected to the burden of using the securitization framework to calculate a capital requirement for counterparty credit risk for OTC derivatives with a securitization SPE. The agencies continue to believe that the securitization framework is the most appropriate way to assess the counterparty credit risk of such exposures, and that in many cases the relatively simple RBA will apply to such exposures. In response to commenter concerns about burden, the agencies have decided to add an optional simple risk weight approach for certain OTC derivatives. Under the final rule, if a securitization exposure is an OTC derivative contract (other than a credit derivative) that has a first priority claim on the cash flows from the underlying exposures (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments), a bank may choose to apply an effective 100 percent risk weight to the exposure rather than the general securitization hierarchy of approaches. This treatment is subject to supervisory approval.

Like the proposed rule, the final rule contains three additional exceptions to the general hierarchy. Each exception parallels the general risk-based capital rules. First, an interest-only mortgage-backed security must be assigned a risk weight that is no less than 100 percent. Although a number of commenters objected to this risk weight floor on the grounds that it was not risk sensitive, the agencies believe that a minimum risk weight of 100 percent is prudent in light of the uncertainty implied by the substantial price volatility of these securities. Second, a sponsoring bank that qualifies as a primary beneficiary and must consolidate an ABCP program as a variable interest entity under GAAP generally may exclude the consolidated ABCP program assets from risk-weighted assets.[91] In such cases, the bank must hold risk-based capital against any securitization exposures of the bank to the ABCP program. Third, as required by Federal statute, a special set of rules applies to transfers of small business loans and leases with recourse by well-capitalized depository institutions.[92]

Servicer Cash Advances

A traditional securitization typically employs a servicing bank that—on a day-to-day basis—collects principal, interest, and other payments from the underlying exposures of the securitization and forwards such payments to the securitization SPE or to investors in the securitization. Such servicing banks often provide to the securitization a credit facility under which the servicing bank may advance cash to ensure an uninterrupted flow of payments to investors in the securitization (including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the underlying exposures). These servicer cash advance facilities are securitization exposures.

Under the final rule, as under the proposed rule, a servicing bank must determine its risk-based capital requirement for any advances under such a facility using the hierarchy of securitization approaches described above. The treatment of the undrawn portion of the facility depends on whether the facility is an ''eligible'' servicer cash advance facility. An eligible servicer cash advance facility is a servicer cash advance facility in which (i) the servicer is entitled to full reimbursement of advances (except that a servicer may be obligated to make non-reimburseable advances for a particular underlying exposure if any such advance is limited to an insignificant amount of the outstanding principal balance of that exposure); (ii) the servicer's right to reimbursement is senior in right of payment to all other claims on the cash flows from the underlying exposures of the securitization; and (iii) the servicer has no legal obligation to, and does not, make advances to the securitization if the servicer concludes the advances are unlikely to be repaid. Consistent with the general risk-based capital rules with respect to residential mortgage servicer cash advances, a servicing bank is not required to hold risk-based capital against the undrawn portion of an eligible servicer cash advance facility. A bank that provides a non-eligible servicer cash advance facility must determine its risk-based capital requirement for the undrawn portion of the facility in the same manner as the bank would determine its risk-based capital requirement for any other undrawn securitization exposure.

Amount of a Securitization Exposure

Under the proposed rule, the amount of an on-balance sheet securitization exposure was the bank's carrying value, if the exposure was held-to-maturity or for trading, or the bank's carrying value minus any unrealized gains and plus any unrealized losses on the exposure, if the exposure was available-for-sale. In general, the amount of an off-balance sheet securitization exposure was the notional amount of the exposure. For an OTC derivative contract that was not a credit derivative, the notional amount was the EAD of the derivative contract (as calculated in section 32).

In the final rule the agencies are maintaining the substance of the proposed provision on the amount of a securitization exposure with one exception. The final rule provides that the amount of a securitization exposure that is a repo-style transaction, eligible margin loan, or OTC derivative (other than a credit derivative) is the EAD of the exposure as calculated in section 32 of the final rule. The agencies believe this change is consistent with the way banks manage these exposures, more appropriately reflects the collateral that directly supports these exposures, and recognizes the credit risk mitigation benefits of netting where these exposures are part of a cross-product netting set. Because the collateral associated with a repo-style transaction or eligible margin loan is reflected in the determination of exposure amount under section 32 of the rule, these transactions are not eligible for the general securitization collateral approach in section 46(b) of the final rule. Similarly, if a bank chooses to reflect collateral associated with an OTC derivative contract in its determination of exposure amount under section 32 of the rule, it may not also apply the general securitization collateral approach in section 46(b) of the final rule. Similar to the definition of EAD for on-balance sheet exposures, the agencies are clarifying that the amount of an on-balance sheet securitization exposure is based on whether or not the exposure is classified as an available for sale security.

Under the proposal, when a securitization exposure to an ABCP program takes the form of a commitment, such as a liquidity facility, the notional amount could be reduced to the maximum potential amount that the bank currently would be required to fund under the arrangement's documentation (the maximum potential amount that could be drawn given the assets currently held by the program). Within some ABCP programs, however, certain commitments, such as liquidity facilities, may be dynamic in that the maximum amount that can be drawn at any moment depends on the current credit quality of the program's underlying assets. That is, if the underlying assets were to remain fixed, but their credit quality deteriorated, the maximum amount that could be drawn against the liquidity facility could increase.

The final rule clarifies that in such circumstances the notional amount of an off-balance sheet securitization exposure to an ABCP program may be reduced to the maximum potential amount that the bank could be required to fund given the program's current assets (calculated without regard to the current credit quality of these assets). Thus, if $100 is the maximum amount that could be drawn given the current volume and current credit quality of the program's assets, but the maximum potential draw against these same assets could increase to as much as $200 if their credit quality were to deteriorate, then the exposure amount is $200.

Some commenters recommended capping the securitization amount for an ABCP liquidity facility at the amount of the outstanding commercial paper covered by that facility. The agencies believe, however, that this would be inappropriate if the liquidity provider could be required to advance a larger amount. The agencies note that when calculating the exposure amount of a liquidity facility, a bank may take into account any limits on advances—including limits based on the amount of commercial paper outstanding—that are contained in the program's documentation.

Implicit Support

Like the proposed rule, the final rule sets forth the regulatory capital consequences if a bank provides support to a securitization in excess of the bank's predetermined contractual obligation to provide credit support to the securitization. First, consistent with

[91] *See* Financial Accounting Standards Board, *Interpretation No. 46: Consolidation of Variable Interest Entities* (January 2003).

[92] *See* 12 U.S.C. 1835, which places a cap on the risk-based capital requirement applicable to a well-capitalized DI that transfers small business loans with recourse. The final rule does not expressly state that the agencies may permit adequately capitalized banks to use the small business recourse rule on a case-by-case basis because the agencies may do this under the general reservation of authority contained in section 1 of the rule.

the general risk-based capital rules,[93] a bank that provides such implicit support must hold regulatory capital against all of the underlying exposures associated with the securitization as if the exposures had not been securitized, and must deduct from tier 1 capital any after-tax gain-on-sale resulting from the securitization. Second, the bank must disclose publicly (i) that it has provided implicit support to the securitization, and (ii) the regulatory capital impact to the bank of providing the implicit support. The bank's primary Federal supervisor also may require the bank to hold regulatory capital against all the underlying exposures associated with some or all the bank's other securitizations as if the exposures had not been securitized, and to deduct from tier 1 capital any after-tax gain-on-sale resulting from such securitizations.

Operational Requirements for Traditional Securitizations

In a traditional securitization, an originating bank typically transfers a portion of the credit risk of exposures to third parties by selling them to a securitization SPE. Under the final rule, consistent with the proposed rule, banks engaging in a traditional securitization may exclude the underlying exposures from the calculation of risk-weighted assets only if each of the following conditions is met: (i) The transfer is a sale under GAAP; (ii) the originating bank transfers to third parties credit risk associated with the underlying exposures; and (iii) any clean-up calls relating to the securitization are eligible clean-up calls (as discussed below). Originating banks that meet these conditions must hold regulatory capital against any securitization exposures they retain in connection with the securitization. Originating banks that fail to meet these conditions must hold regulatory capital against the transferred exposures as if they had not been securitized and must deduct from tier 1 capital any gain-on-sale resulting from the transaction. The operational requirements for synthetic securitization are described in preamble section V.E.7., below.

Consistent with the general risk-based capital rules, the above operational requirements refer specifically to GAAP for the purpose of determining whether a securitization transaction should be treated as an asset sale or a financing. In contrast, the New Accord stipulates guiding principles for use in determining whether sale treatment is warranted. One commenter requested that the agencies conform the proposed operational requirements for traditional securitizations to those in the New Accord. The agencies believe that the current conditions to qualify for sale treatment under GAAP are broadly consistent with the guiding principles enumerated in the New Accord. However, if GAAP in this area were to change materially in the future, the agencies would reassess, and possibly revise, the operational standards.

Clean-Up Calls

To satisfy the operational requirements for securitizations and enable an originating bank to exclude the underlying exposures from the calculation of its risk-based capital requirements, any clean-up call associated with a securitization must be an eligible clean-up call. The proposal defined a clean-up call as a contractual provision that permits a servicer to call securitization exposures (for example, asset-backed securities) before the stated (or contractual) maturity or call date. The preamble to the proposed rule explained that, in the case of a traditional securitization, a clean-up call is generally accomplished by repurchasing the remaining securitization exposures once the amount of underlying exposures or outstanding securitization exposures falls below a specified level. In the case of a synthetic securitization, the clean-up call may take the form of a clause that extinguishes the credit protection once the amount of underlying exposures has fallen below a specified level.

Under the proposed rule, an eligible clean-up call would be a clean-up call that:

(i) Is exercisable solely at the discretion of the servicer;

(ii) Is not structured to avoid allocating losses to securitization exposures held by investors or otherwise structured to provide credit enhancement to the securitization (for example, to purchase non-performing underlying exposures); and

(iii) (A) For a traditional securitization, is only exercisable when 10 percent or less of the principal amount of the underlying exposures or securitization exposures (determined as of the inception of the securitization) is outstanding.

(B) For a synthetic securitization, is only exercisable when 10 percent or less of the principal amount of the reference portfolio of underlying exposures (determined as of the inception of the securitization) is outstanding.

A number of comments addressed the proposed definitions of clean-up call and eligible clean-up call. One commenter observed that prudential concerns would also be satisfied if the call were at the discretion of the originator of the underlying exposures. The agencies concur with this view and have modified the final rule to state that a clean-up call may permit the servicer or originating bank to call the securitization exposures before the stated maturity or call date, and that an eligible clean-up call must be exercisable solely at the discretion of the servicer or the originating bank. Commenters also requested clarification whether, for a securitization that involves a master trust, the 10 percent requirement described above in criteria (iii)(A) and (iii)(B) would be interpreted as applying to each series or tranche of securities issued from the master trust. The agencies believe this is a reasonable interpretation. Thus, where a securitization SPE is structured as a master trust, a clean-up call with respect to a particular series or tranche issued by the master trust would meet criteria (iii)(A) and (iii)(B) so long as the outstanding principal amount in that series was 10 percent or less of its original amount at the inception of the series.

Additional Supervisory Guidance

Over the last several years, the agencies have published a significant amount of supervisory guidance to assist banks with assessing the extent to which they have transferred credit risk and, consequently, may recognize any reduction in required regulatory capital as a result of a securitization or other form of credit risk transfer.[94] In general, the agencies expect banks to continue to use this guidance, most of which remains applicable to the advanced approaches securitization framework. Banks are encouraged to consult with their primary Federal supervisor about transactions that require additional guidance.

2. Ratings-Based Approach (RBA)

Under the final rule, as under the proposal, a bank must determine the risk-weighted asset amount for a securitization exposure that is eligible for the RBA by multiplying the amount of the exposure by the appropriate risk-weight provided in the tables in section 43 of the rule. Under the proposal, whether a securitization exposure was eligible for the RBA would depend on whether the bank holding the

[93] Interagency Guidance on Implicit Recourse in Asset Securitizations, May 23, 2002.

[94] *See, e.g.*, OCC Bulletin 99–46 (Dec. 13, 1999) (OCC); FDIC Financial Institution Letter 109–99 (Dec. 13, 1999) (FDIC); SR Letter 99–37 (Dec. 13, 1999) (Board); CEO Ltr. 99–119 (Dec. 14, 1999) (OTS).

securitization exposure is an originating bank or an investing bank. An originating bank would be eligible to use the RBA for a securitization exposure if (i) the exposure had two or more external ratings, or (ii) the exposure had two or more inferred ratings. In contrast, an investing bank would be eligible to use the RBA for a securitization exposure if the exposure has one or more external or inferred ratings. A bank would be an originating bank if it (i) directly or indirectly originated or securitized the underlying exposures included in the securitization, or (ii) serves as an ABCP program sponsor to the securitization.

The proposed rule defined an external rating as a credit rating assigned by a NRSRO to an exposure, provided (i) the credit rating fully reflects the entire amount of credit risk with regard to all payments owed to the holder of the exposure, and (ii) the external rating is published in an accessible form and is included in the transition matrices made publicly available by the NRSRO that summarize the historical performance of positions it has rated. For example, if a holder is owed principal and interest on an exposure, the credit rating must fully reflect the credit risk associated with timely repayment of principal and interest. Under the proposed rule, an exposure's applicable external rating was the lowest external rating assigned to the exposure by any NRSRO.

The proposed two-rating requirement for originating banks was the only material difference between the treatment of originating banks and investing banks under the proposed securitization framework. Although the two-rating requirement is not included in the New Accord, it is generally consistent with the treatment of originating and investing banks in the general risk-based capital rules. The agencies sought comment on whether this treatment was appropriate, and on possible alternative mechanisms that could be employed to ensure the reliability of external and inferred ratings on securitization exposures retained by originating banks.

Commenters generally objected to the two-rating requirement for originating banks. Many asserted that since the credit risk of a given securitization exposure was the same regardless of the holder, the risk-based capital treatments also should be the same. Because external ratings would be publicly available, some commenters contended that NRSROs will have strong reputational reasons to give unbiased ratings—even to non-traded securitization exposures retained by originating banks. The agencies continue to believe that external ratings for securitization exposures retained by an originating bank, which typically are not traded, are subject to less market discipline than ratings for exposures sold to third parties. This disparity in market discipline warrants more stringent conditions on use of the former for risk-based capital purposes. Accordingly, the final rule retains the two-rating requirement for originating banks.

Consistent with the New Accord, the final rule states that an unrated securitization exposure has an inferred rating if another securitization exposure issued by the same issuer and secured by the same underlying exposures has an external rating and this rated reference exposure (i) is subordinate in all respects to the unrated securitization exposure; (ii) does not benefit from any credit enhancement that is not available to the unrated securitization exposure; and (iii) has an effective remaining maturity that is equal to or longer than the unrated securitization exposure. Under the RBA, securitization exposures with an inferred rating are treated the same as securitization exposures with an identical external rating. This definition does not permit a bank to assign an inferred rating based on the ratings of the underlying exposures in a securitization, even when the unrated securitization exposure is secured by a single, externally rated security. In particular, such a look-through approach would fail to meet the requirements that the rated reference exposure must be issued by the same issuer, secured by the same underlying assets, and subordinated in all respects to the unrated securitization exposure.

The agencies sought comment on whether they should consider other bases for inferring a rating for an unrated securitization position, such as using an applicable credit rating on outstanding long-term debt of the issuer or guarantor of the securitization exposure. In situations where an unrated securitization exposure benefited from a guarantee that covered all contractual payments associated with the securitization exposure, several commenters advocated allowing an inferred rating to be assigned based on the long-term rating of the guarantor. In addition, some commenters recommended that if a senior, unrated securitization exposure is secured by a single externally rated underlying security, a bank should be permitted to assign an inferred rating for the unrated exposure using a look-through approach.

The agencies do not believe there is a compelling need at this time to supplement the New Accord's methods for determining an inferred rating. However, if a need develops in the future, the agencies will seek to revise the New Accord in coordination with the BCBS and other supervisory and regulatory authorities. In the situations cited above, the framework already provides simplified methods for calculating a securitization exposure's risk-based capital requirement. For example, when a securitization exposure benefits from a full guarantee, such as from an externally rated monoline insurance company, the exposure's external rating often will reflect that guarantee. When the guaranteed securitization exposure is not externally rated, subject to the rules for recognition of guarantees of securitization exposures in section 46, the unrated securitization exposure may be treated as a direct (wholesale) exposure to the guarantor. In addition, when a securitization exposure to an ABCP program is secured by a single, externally rated asset, a look-through approach may be possible under the IAA provided that such a look-through is no less conservative than the applicable NRSRO rating methodologies.

Under the proposal, if a securitization exposure had multiple external ratings or multiple inferred ratings, a bank would be required to use the lowest rating (the rating that would produce the highest risk-based capital requirement). Commenters objected that this treatment was significantly more conservative than required by the New Accord, which permits use of the second most favorable rating, and would unfairly penalize banks in situations where the lowest rating was unsolicited or an outlier. The agencies recognize commenters' concerns regarding unsolicited ratings, and note that the New Accord states banks should use solicited ratings. To maintain consistency with the general risk-based capital rules, the final rule defines the applicable external rating of a securitization exposure to be its lowest solicited external rating and the applicable inferred rating of a securitization exposure to be the inferred rating based on its lowest solicited external rating.

For securitization exposures eligible for the RBA, the risk-based capital requirement per dollar of securitization exposure depends on four factors: (i) The applicable rating of the exposure; (ii) whether the rating reflects a long-term or short-term assessment of the exposure's credit risk; (iii) whether the exposure is a ''senior'' exposure; and (iv) a measure of the effective number (''N'') of underlying exposures. In response to a specific question posed by the agencies, commenters generally supported linking risk weights under the RBA to these factors.

In the proposed rule, a ''senior securitization exposure'' was defined as a securitization exposure that has a first priority claim on the cash flows from the underlying exposures, disregarding the claims of a service provider (such as a swap counterparty or trustee, custodian, or paying agent for the securitization) to fees from the securitization. Generally, only the most senior tranche of a securitization would be a senior securitization exposure. For example, if multiple tranches of a securitization share the transaction's highest rating, only the tranche with the shortest remaining maturity would be treated as senior, since other tranches with the same rating would not have a first claim to cash flows throughout their lifetimes. A liquidity facility that supports an ABCP program would be a senior securitization exposure if the liquidity facility provider's right to reimbursement of the drawn amounts was senior to all claims on the cash flows from the underlying exposures except claims of a service provider to fees.

In the final rule, the agencies modified this definition to clarify two points. First, in the context of an ABCP program, the final rule specifically states that both the most senior commercial paper issued by the program and a liquidity facility supporting the program may be ''senior'' exposures if the liquidity facility provider's right to reimbursement of any drawn amounts is senior to all claims on the cash flow from the underlying exposures. Second, the final rule clarifies that when determining whether a securitization exposure is senior, a bank is not required to consider any amounts due under interest rate or currency derivative contracts, fees due, or other similar payments.

Consistent with the New Accord, a bank must use Table F below when a securitization exposure qualifies for the RBA based on a long-term external rating or an inferred rating based on a long-term external rating. A bank may apply the risk weights in column 1 of Table F to the securitization exposure only if the N is six or more and the securitization exposure is a senior securitization exposure. If N is six or more but the securitization exposure is not a senior securitization exposure, the bank must apply the risk weights in column 2 of Table F. Applying the principle of conservatism, however, if N is six or more a bank may use the risk weights in column 2 of Table F without determining whether the exposure is senior. A bank must apply the risk weights in column 3 of Table F to the securitization exposure if N is less than six.

In certain situations the rule provides a simplified approach for determining N. If the notional number of underlying exposures of a securitization is 25 or more or if all the underlying exposures are retail exposures, a bank may assume that N is six or more (unless the bank knows or has reason to know that N is less than six). However, if the notional number of underlying exposures of a securitization is less than 25 and one or more of the underlying exposures is a non-retail exposure, the bank must compute N as described in the SFA section below.

A few commenters wanted to determine N only at the inception of a securitization transaction, due to the burden of tracking N over time. The agencies believe that a bank must track N over time to ensure an appropriate risk-based capital requirement. The number of underlying exposures in a securitization typically changes over time as some underlying exposures are repaid or default. As the number of underlying exposures changes, the risk profile of the associated securitization exposures changes, and a bank must reflect this change in risk profile in its risk-based capital requirement.

TABLE F.—LONG-TERM CREDIT RATING RISK WEIGHTS UNDER RBA AND IAA

Applicable external or inferred rating (illustrative rating example)	Column 1	Column 2	Column 3
	Risk weights for senior securitization exposures backed by granular pools (percent)	Risk weights for non-senior securitization exposures backed by granular pools (percent)	Risk weights for securitization exposures backed by non-granular pools (percent)
Highest investment grade (for example, AAA)	7	12	20
Second highest investment grade (for example, AA)	8	15	25
Third-highest investment grade—positive designation (for example, A+)	10	18	35
Third-highest investment grade (for example, A)	12	20	
Third-highest investment grade—negative designation (for example, A−)	20	35	
Lowest investment grade—positive designation (for example, BBB+)	35	50	
Lowest investment grade (for example, BBB)	60	75	
Lowest investment grade—negative designation (for example, BBB−)	100		
One category below investment grade—positive designation (for example, BB+)	250		
One category below investment grade (for example, BB)	425		
One category below investment grade—negative designation (for example, BB−)	650		

TABLE F.—LONG-TERM CREDIT RATING RISK WEIGHTS UNDER RBA AND IAA—Continued

Applicable external or inferred rating (illustrative rating example)	Column 1 Risk weights for senior securitization exposures backed by granular pools (percent)	Column 2 Risk weights for non-senior securitization exposures backed by granular pools (percent)	Column 3 Risk weights for securitization exposures backed by non-granular pools (percent)
More than one category below investment grade	Deduction from tier 1 and tier 2 capital.		

A bank must apply the risk weights in Table G when the securitization exposure qualifies for the RBA based on a short-term external rating or an inferred rating based on a short-term external rating. A bank must apply the decision rules outlined in the previous paragraph to determine which column of Table G applies.

TABLE G.—SHORT-TERM CREDIT RATING RISK WEIGHTS UNDER RBA AND IAA

Applicable external or inferred rating (illustrative rating example)	Column 1 Risk weights for senior securitization exposures backed by granular pools (percent)	Column 2 Risk weights for non-senior securitization exposures backed by granular pools (percent)	Column 3 Risk weights for securitization exposures backed by non-granular pools (percent)
Highest investment grade (for example, A1)	7	12	20
Second highest investment grade (for example, A2)	12	20	35
Third highest investment grade (for example, A3)	60	75	75
All other ratings	Deduction from tier 1 and tier 2 capital.		

Within Tables G and H, risk weights increase as rating grades decline. Under column 2 of Table F, for example, the risk weights range from 12 percent for exposures with the highest investment-grade rating to 650 percent for exposures rated one category below investment grade with a negative designation. This pattern of risk weights is broadly consistent with analyses employing standard credit risk models and a range of assumptions regarding correlation effects and the types of exposures being securitized.[95] These analyses imply that, compared with a corporate bond having a given level of stand-alone credit risk (for example, as measured by its expected loss rate), a securitization tranche having the same level of stand-alone credit risk—but backed by a reasonably granular and diversified pool—will tend to exhibit more systematic risk.[96] This effect is most pronounced for below-investment-grade tranches and is the primary reason why the RBA risk-weights increase rapidly as ratings deteriorate over this range—much more rapidly than for similarly rated corporate bonds.

Under the RBA, a securitization exposure that has an investment-grade rating and has fewer than six effective underlying exposures generally receives a higher risk weight than a similarly rated securitization exposure with six or more effective underlying exposures. This treatment is intended to discourage a bank from engaging in regulatory capital arbitrage by securitizing very high-quality wholesale exposures (wholesale exposures with a low PD and LGD), obtaining external ratings on the securitization exposures issued by the securitization, and retaining essentially all the credit risk of the pool of underlying exposures.

A bank must deduct from regulatory capital any securitization exposure with an external or inferred rating lower than one category below investment grade for long-term ratings or below investment grade for short-term ratings. Although this treatment is more conservative than suggested by credit risk modeling analyses, the agencies believe that deducting such exposures from regulatory capital is appropriate in light of significant modeling uncertainties for such low-rated securitization tranches. Moreover, external ratings of these tranches are subject to less market discipline because these positions generally are retained by the bank and are not traded.

The most senior tranches of granular securitizations with long-term investment-grade external ratings receive a more favorable risk weight as compared to more subordinated tranches of the same securitizations. To be considered granular, a securitization must have an N of at least six. Consistent with the New Accord, the lowest possible risk-weight, 7 percent, applies only to senior securitization exposures receiving the highest external rating (for example, AAA) and backed by a granular asset pool.

The agencies sought comment on how well the risk weights in Tables G and H capture the most important risk factors for securitization exposures of varying degrees of seniority and granularity. A number of commenters contended that, in the interest of competitive equity, the risk weight for senior securitization exposures having the highest rating and backed by a granular asset pool should be 6 percent, the level specified in the European Union's Capital Requirements Directive (CRD). The agencies decided against making this change. There is no compelling empirical evidence to support a 6 percent risk weight for all exposures satisfying these conditions

[95] *See* Vladislav Peretyatkin and William Perraudin, ''Capital for Asset-Backed Securities,'' Bank of England, February 2003.

[96] *See, e.g.,* Michael Pykhtin and Ashish Dev, ''Credit Risk in Asset Securitizations: An Analytical Model,'' *Risk* (May 2002) S16–S20.

and, further, a 6 percent risk weight is inconsistent with the New Accord. Moreover, estimates of the credit risk associated with such positions tend to be highly sensitive to subjective modeling assumptions and to the specific types of underlying assets and structure of the transaction, which supports the use of the more conservative approach in the New Accord.

3. Internal Assessment Approach (IAA)

Under the final rule, as under the proposal, a bank is permitted to compute its risk-based capital requirement for a securitization exposure to an ABCP program (such as a liquidity facility or credit enhancement) using the bank's internal assessment of the credit quality of the securitization exposure. The ABCP program may be sponsored by the bank itself or by a third party. To apply the IAA, the bank's internal assessment process and the ABCP program must meet certain qualification requirements in section 44 of the final rule, and the securitization exposure must initially be internally rated at least equivalent to investment grade. A bank that elects to use the IAA for any securitization exposure to an ABCP program must use the IAA to compute risk-based capital requirements for all securitization exposures that qualify for the IAA. Under the IAA, a bank maps its internal credit assessment of a securitization exposure to an equivalent external credit rating from an NRSRO. The bank must determine the risk-weighted asset amount for a securitization exposure by multiplying the amount of the exposure (using the methodology set forth above in the RBA section) by the appropriate risk weight provided in Table F or G above.

Under the proposal, a bank required prior written approval from its primary Federal supervisor before it could use the IAA. Several commenters objected to this requirement maintaining that approval is not required under the New Accord and would likely delay a bank being authorized to use the IAA for new ABCP programs. Instead, commenters requested a submission and non-objection approach, under which a bank would be allowed to use the IAA in the absence of any objection from its supervisor based on examination findings. The final rule retains the requirement for prior written approval before a bank can use the IAA. Like other optional approaches in the final rule (for example, the double default treatment and the internal models methodology), it is important that the primary Federal supervisor have an opportunity to review a bank's practices relative to the final rule before allowing a bank to use the optional approach. If a bank chooses to implement the IAA at the same time that it implements the advanced approaches, the IAA review and approval process will be part of the overall qualification process. If a bank chooses to implement the IAA after it has qualified for the advanced approaches, prior written approval is a necessary safeguard for ensuring appropriate application of the IAA. Furthermore, the agencies believe this requirement can be implemented without impeding future innovations in ABCP programs.

Similar to the proposed rule, under the final rule a bank must demonstrate that its internal credit assessment process satisfies all the following criteria in order to receive approval to use the IAA.

The bank's internal credit assessments of securitization exposures to ABCP programs must be based on publicly available rating criteria used by an NRSRO for evaluating the credit risk of the underlying exposures. The requirement that an NRSRO's rating criteria be publicly available does not mean that these criteria must be published formally by the NRSRO. While the agencies expect banks to rely on published rating criteria when these criteria are available, an NRSRO often delays publication of rating criteria for securitizations involving new asset types until the NRSRO builds sufficient experience with such assets. Similarly, as securitization structures evolve over time, published criteria may be revised with some lag. Especially for securitizations involving new structures or asset types, the requirement that rating criteria be publicly available should be interpreted broadly to encompass not only published criteria, but also criteria that are obtained through written correspondence or other communications with an NRSRO. In such cases, these communications should be documented and available for review by the bank's primary Federal supervisor. The agencies believe this flexibility is appropriate only for unique situations when published rating criteria are not generally applicable.

A commenter asked whether the applicable NRSRO rating criteria must cover all contractual payments owed to the bank holding the exposure, or only contractual principal and interest. For example, liquidity facilities typically obligate the seller to make certain future fee and indemnity payments directly to the liquidity bank. These ancillary obligations, however, are not an exposure to the ABCP program and would not normally be covered by NRSRO rating criteria, which focus on the risks of the underlying assets and the exposure's vulnerability to those risks. The agencies agree that such ancillary obligations of the seller need not be covered by the applicable NRSRO rating criteria for an exposure to be eligible for the IAA.

To be eligible for the IAA, a bank must also demonstrate that its internal credit assessments of securitization exposures used for regulatory capital purposes are consistent with those used in its internal risk management process, capital adequacy assessment process, and management information reporting systems. The bank must also demonstrate that its internal credit assessment process has sufficient granularity to identify gradations of risk. Each of the bank's internal credit assessment categories must correspond to an external credit rating of an NRSRO. In addition, the bank's internal credit assessment process, particularly the stress test factors for determining credit enhancement requirements, must be at least as conservative as the most conservative of the publicly available rating criteria of the NRSROs that have provided external credit ratings to the commercial paper issued by the ABCP program. In light of recent events in the securitization market, the agencies emphasize that if an NRSRO that provides an external rating to an ABCP program's commercial paper changes its methodology, the bank must evaluate whether to revise its internal assessment process.

Moreover, the bank must have an effective system of controls and oversight that ensures compliance with these operational requirements and maintains the integrity and accuracy of the internal credit assessments. The bank must also have an internal audit function independent from the ABCP program business line and internal credit assessment process that assesses at least annually whether the controls over the internal credit assessment process function as intended. The bank must review and update each internal credit assessment whenever new material information is available, but no less frequently than annually. The bank must also validate its internal credit assessment process on an ongoing basis, but not less frequently than annually.

Under the proposed rule, in order for a bank to use the IAA on a specific exposure to an ABCP program, the program had to satisfy the following requirements:

(i) All commercial paper issued by the ABCP program must have an external rating.

(ii) The ABCP program must have robust credit and investment guidelines (underwriting standards).

(iii) The ABCP program must perform a detailed credit analysis of the asset sellers' risk profiles.

(iv) The ABCP program's underwriting policy must establish minimum asset eligibility criteria that include a prohibition of the purchase of assets that are significantly past due or defaulted, as well as limitations on concentrations to an individual obligor or geographic area and the tenor of the assets to be purchased.

(v) The aggregate estimate of loss on an asset pool that the ABCP program is considering purchasing must consider all sources of potential risk, such as credit and dilution risk.

(vi) The ABCP program must incorporate structural features into each purchase of assets to mitigate potential credit deterioration of the underlying exposures. Such features may include wind-down triggers specific to a pool of underlying exposures.

Commenters suggested that the program-level eligibility criteria should apply only to those elements of the ABCP program that are relevant to the securitization exposure held by the bank in order to prevent an ABCP program's purchase of a single asset pool that does not meet the above criteria from disallowing the IAA for securitization exposures to that program that are unrelated to the non-qualifying asset pool. The agencies agree that this is a reasonable approach. Accordingly, the final rule applies criteria (ii) through (vi) to the exposures underlying a securitization exposure, rather than to the entire ABCP program. For a program-wide credit enhancement facility, all of the separate seller-specific arrangements benefiting from that facility must meet the above requirements for the facility to be eligible for the IAA.

Several commenters objected to the requirement that the ABCP program prohibit purchases of significantly past-due or defaulted assets. Commenters contended that such purchases should be allowed so long as the applicable NRSRO rating criteria permit and deal appropriately with such assets. Like the New Accord, the final rule prohibits the ABCP program from purchasing significantly past-due or defaulted assets in order to ensure that the IAA is applied only to securitization exposures that are relatively low-risk at inception. This criterion would be met if the ABCP program does not fund underlying assets that are significantly past due or defaulted when placed into the program (that is, the program's advance rate against such assets is 0 percent) and the securitization exposure is not subject to potential losses associated with these assets. The agencies observe that the rule does not set a specific number-of-days-past due criterion. In addition, the term 'defaulted assets' in criterion (iv) does not refer to the wholesale and retail definitions of default in the final rule, but rather may be interpreted as referring to assets that have been charged off or written down by the seller prior to being placed into the ABCP program or to assets that would be charged off or written down under the program's governing contracts.

In addition, commenters asked the agencies to clarify that a bank may ignore one or more of the eligibility requirements where the requirement is not relevant to a particular exposure. For example, in the case of a liquidity facility supporting a static pool of term loans, it may not be possible to incorporate features into the transaction that mitigate against a potential deterioration in these assets, and there may be no use for detailed credit analyses of the seller following the securitization if the seller has no further involvement with the transaction. The agencies have modified the final criterion for determining whether an exposure qualifies for the IAA, to specify that where relevant, the ABCP program must incorporate structural features into each purchase of exposures underlying the securitization exposure to mitigate potential credit deterioration of the underlying exposures.

4. Supervisory Formula Approach (SFA)

General Requirements

Under the proposed rule, a bank using the SFA would determine the risk-weighted asset amount for a securitization exposure by multiplying the SFA risk-based capital requirement for the exposure (as determined by the supervisory formula set forth below) by 12.5. If the SFA risk weight for a securitization exposure was 1,250 percent or greater, however, the bank would deduct the exposure from total capital rather than risk weight the exposure. The agencies noted that deduction is consistent with the treatment of other high-risk securitization exposures, such as CEIOs.

The SFA capital requirement for a securitization exposure depends on the following seven inputs:

(i) The amount of the underlying exposures (UE);

(ii) The securitization exposure's proportion of the tranche that contains the securitization exposure (TP);

(iii) The sum of the risk-based capital requirement and ECL for the underlying exposures (as determined under the final rule as if the underlying exposures were held directly on the bank's balance sheet) divided by the amount of the underlying exposures (K_{IRB});

(iv) The tranche's credit enhancement level (L);

(v) The tranche's thickness (T);

(vi) The securitization's effective number of underlying exposures (N); and

(vii) The securitization's exposure-weighted average loss given default (EWALGD).

A bank may only use the SFA to determine its risk-based capital requirement for a securitization exposure if the bank can calculate each of these seven inputs on an ongoing basis. In particular, if a bank cannot compute K_{IRB} because the bank cannot compute the risk-based capital requirement for all underlying exposures, the bank may not use the SFA to compute its risk-based capital requirement for the securitization exposure. In those cases, the bank must deduct the exposure from regulatory capital.

The SFA capital requirement for a securitization exposure is UE multiplied by TP multiplied by the greater of (i) $0.0056 * T$; or (ii) $S[L+T] - S[L]$, where:

(i) $$S[Y]=\begin{cases} Y & \text{when } Y \le K_{IRB} \\ K_{IRB}+K[Y]-K[K_{IRB}]+\dfrac{d\cdot K_{IRB}}{20}\left(1-e^{\frac{20\cdot(K_{IRB}-Y)}{K_{IRB}}}\right) & \text{when } Y > K_{IRB} \end{cases}$$

(ii) $$K[Y]=(1-h)\cdot\left[\left(1-\beta[Y;a,b]\right)\cdot Y+\beta[Y;a+1,b]\cdot c\right]$$

(iii) $$h=\left(1-\frac{K_{IRB}}{EWALGD}\right)^{N}$$

(iv) $$a=g\cdot c$$

(v) $$b=g\cdot(1-c)$$

(vi) $$c=\frac{K_{IRB}}{1-h}$$

(vii) $$g=\frac{(1-c)\cdot c}{f}-1$$

(viii) $$f=\frac{v+K_{IRB}^{2}}{1-h}-c^{2}+\frac{(1-K_{IRB})\cdot K_{IRB}-v}{(1-h)\cdot 1000}$$

(ix) $$v=K_{IRB}\cdot\frac{(EWALGD-K_{IRB})+.25\cdot(1-EWALGD)}{N}$$

(x) $$d=1-(1-h)\cdot(1-\beta[K_{IRB};a,b])$$

In these expressions, β[Y; a, b] refers to the cumulative beta distribution with parameters a and b evaluated at Y. In the case where N = 1 and EWALGD = 100 percent, S[Y] in formula (1) must be calculated with K[Y] set equal to the product of K_{IRB} and Y, and d set equal to 1–K_{IRB}. The major inputs to the SFA formula (UE, TP, K_{IRB}, L, T, EWALGD, and N) are defined below and in section 45 of the final rule.

The agencies are modifying the SFA treatment of certain high risk securitization exposures in the final rule. Under the proposed treatment described above, a bank would have to deduct from total capital any securitization exposure with a SFA risk weight equal to 1,250 percent. Under certain circumstances, however, a slight increase in the thickness of the tranche that contains the securitization exposure (T), holding other SFA risk parameters fixed, could cause the exposure's SFA risk-weight to fall below 1,250 percent. As a result, the bank would not deduct any part of the exposure from capital and would, instead, reflect the entire amount of the SFA risk-based capital requirement in its risk-weighted assets. Consistent with the New Accord,[97] the agencies have removed this anomaly from the final rule. Under the final rule a bank must deduct from total capital any part of a securitization exposure that incurs a 1,250 percent risk weight under the SFA (that is, any part of a securitization exposure covering loss rates on the underlying assets between zero and K_{IRB}). Any part of a securitization exposure that incurs less than a 1,250 percent risk weight must be risk weighted rather than deducted.

To illustrate, suppose that an exposure's SFA capital requirement equaled $15, and UE, TP, K_{IRB}, and L equaled $1000, 1.0, 0.10, and 0.095, respectively. The bank must deduct from total capital $5 (UE × TP × ($K_{IRB}$ –L)), and the exposure's risk-weighted asset amount would be $125 (($15–$5) × 12.5).

The specific securitization exposures that are subject to this deduction treatment under the SFA may change over time in response to variations in the credit quality of the underlying exposures. For example, if the pool's IRB capital requirement were to increase after the inception of a securitization, additional portions of unrated securitization exposures may fall below K_{IRB} and thus become subject to deduction under the SFA. Therefore, if at the inception of a securitization a bank owns an unrated securitization exposure well in excess of K_{IRB}, the capital requirement on the exposure could climb rapidly in the event of marked deterioration in the credit quality of the underlying exposures and

[97] New Accord, Annex 7.

the bank may be required to deduct the exposure.

The SFA formula effectively imposes a 56 basis point minimum risk-based capital requirement (8 percent of the 7 percent risk weight) per dollar of securitization exposure. Although such a floor may impose a capital requirement that is too high for some securitization exposures, the agencies continue to believe that some minimum prudential capital requirement is appropriate in the securitization context. This 7 percent risk-weight floor is also consistent with the lowest capital requirement available under the RBA and, thus, should reduce incentives for regulatory capital arbitrage.

The SFA formula is a blend of credit risk modeling results and supervisory judgment. The function S[Y] incorporates two distinct features. The first is a pure model-based estimate of the pool's aggregate systematic or non-diversifiable credit risk that is attributable to a first loss position covering losses up to and including Y. Because the tranche of interest covers losses over a specified range (defined in terms of L and T), the tranche's systematic risk can be represented as S[L+T] − S[L]. The second feature involves a supervisory add-on primarily intended to avoid behavioral distortions associated with what would otherwise be a discontinuity in capital requirements for relatively thin mezzanine tranches lying just below and just above the K_{IRB} boundary. Without this add-on, all tranches at or below K_{IRB} would be deducted from capital, whereas a very thin tranche just above K_{IRB} would incur a pure model-based percentage capital requirement that could vary between zero and one, depending on the number of effective underlying exposures (N). The supervisory add-on applies primarily to positions just above K_{IRB}, and its quantitative effect diminishes rapidly as the distance from K_{IRB} widens.

Apart from the risk-weight floor and other supervisory adjustments described above, the supervisory formula attempts to be as consistent as possible with the parameters and assumptions of the IRB approach that would apply to the underlying exposures if held directly by a bank.[98] The specification of S[Y] assumes that K_{IRB} is an accurate measure of the total systematic credit risk of the pool of underlying exposures and that a securitization merely redistributes this systematic risk among its various tranches. In this way, S[Y] embodies precisely the same asset correlations as are assumed elsewhere within the IRB approach. In addition, this specification embodies the result that a pool's systematic risk (K_{IRB}) tends to be redistributed toward more senior tranches as N declines.[99] The importance of pool granularity depends on the pool's average loss severity rate, EWALGD. For small values of N, the framework implies that, as EWALGD increases, systematic risk is shifted toward senior tranches. For highly granular pools, such as securitizations of retail exposures, EWALGD would have no influence on the SFA capital requirement.

Inputs to the SFA Formula

Consistent with the proposal, the final rule defines the seven inputs into the SFA formula as follows:

(i) *Amount of the underlying exposures (UE).* This input (measured in dollars) is the EAD of any underlying wholesale and retail exposures plus the amount of any underlying exposures that are securitization exposures (as defined in section 42(e) of the proposed rule) plus the adjusted carrying value of any underlying equity exposures (as defined in section 51(b) of the proposed rule). UE also includes any funded spread accounts, cash collateral accounts, and other similar funded credit enhancements.

(ii) *Tranche percentage (TP).* TP is the ratio of (i) the amount of the bank's securitization exposure to (ii) the amount of the securitization tranche that contains the bank's securitization exposure.

(iii) *K_{IRB}*. K_{IRB} is the ratio of (i) the risk-based capital requirement for the underlying exposures plus the ECL of the underlying exposures (all as determined as if the underlying exposures were directly held by the bank) to (ii) UE. The definition of K_{IRB} includes the ECL of the underlying exposures in the numerator because if the bank held the underlying exposures on its balance sheet, the bank also would hold reserves against the exposures.

The calculation of K_{IRB} must reflect the effects of any credit risk mitigant applied to the underlying exposures (either to an individual underlying exposure, a group of underlying exposures, or to the entire pool of underlying exposures). In addition, all assets related to the securitization must be treated as underlying exposures for purposes of the SFA, including assets in a reserve account (such as a cash collateral account).

In practice, a bank's ability to calculate K_{IRB} will often determine whether it can use the SFA or whether it must instead deduct an unrated securitization exposure from total capital. As noted above, there is a need for flexibility when the estimation of K_{IRB} is constrained by data shortcomings, such as when the bank holding the securitization exposure is not the servicer of the underlying assets. The final rule clarifies that the simplified approach for eligible purchased wholesale exposures (Section 31) may be used for calculating K_{IRB}.

To reduce the operational burden of estimating K_{IRB}, several commenters urged the agencies to develop a simple look-through approach such that when all of the assets held by the SPE are externally rated, K_{IRB} could be determined directly from the external ratings of theses assets. The agencies believe that a look-through approach for estimating K_{IRB} would be inconsistent with the New Accord and would increase the potential for capital arbitrage. The agencies note that several simplified methods for estimating risk-weighted assets for the underlying exposures for the purposes of computing K_{IRB} are provided in other parts of the framework. For example, the simplified approach for eligible purchased wholesale exposures in section 31 may be available when a bank can estimate risk parameters for segments of underlying wholesale exposures but not for each of the individual exposures. If the assets held by the SPE are securitization exposures with external ratings, the RBA would be used to determine risk-weighted assets for the underlying exposures based on these ratings. If the assets held by the SPE represent shares in an investment company (that is, unleveraged, pro rata ownership interests in a pool of financial assets), the bank may be eligible to determine risk-weighted assets for the underlying exposures using the Alternative Modified Look-Through Approach of Section 54 (d) based on investment limits specified in the program's prospectus or similar documentation.

(iv) *Credit enhancement level (L).* L is the ratio of (i) the amount of all securitization exposures subordinated to the securitization tranche that contains the bank's securitization exposure to (ii) UE. Banks must determine L before considering the effects of any tranche-specific credit enhancements (such as third-party guarantees that benefit only a single tranche). Any after-tax gain-on-

[98] The conceptual basis for specification of K[x] is developed in Michael B. Gordy and David Jones, ''Random Tranches,'' *Risk* (March 2003), 16(3), 78–83.

[99] *See* Michael Pykhtin and Ashish Dev, ''Coarse-grained CDOs,'' *Risk* (January 2003), 16(1), 113–116.

sale or CEIOs associated with the securitization may not be included in L.

Any reserve account funded by accumulated cash flows from the underlying exposures that is subordinated to the tranche that contains the bank's securitization exposure may be included in the numerator and denominator of L to the extent cash has accumulated in the account. Unfunded reserve accounts (reserve accounts that are to be funded from future cash flows from the underlying exposures) may not be included in the calculation of L.

In some cases, the purchase price of receivables will reflect a discount that provides credit enhancement (for example, first loss protection) for all or certain tranches. When this arises, L should be calculated inclusive of this discount if the discount provides credit enhancement for the securitization exposure.

(v) *Thickness of tranche (T).* T is the ratio of (i) the size of the tranche that contains the bank's securitization exposure to (ii) UE.

(vi) *Effective number of exposures (N).* As a general matter, the effective number of exposures is calculated as follows:

$$N = \frac{(\sum_i EAD_i)^2}{\sum_i EAD_i^2}$$

where EAD_i represents the EAD associated with the i^{th} instrument in the pool of underlying exposures. For purposes of computing N, multiple exposures to one obligor must be treated as a single underlying exposure. In the case of a re-securitization (a securitization in which some or all of the underlying exposures are themselves securitization exposures), a bank must treat each underlying securitization exposure as a single exposure and must not look through to the exposures that secure the underlying securitization exposures.

N represents the granularity of a pool of underlying exposures using an ''effective'' number of exposures concept rather than a ''gross'' number of exposures concept to appropriately assess the diversification of pools that have individual underlying exposures of different sizes. An approach that simply counts the gross number of underlying exposures in a pool treats all exposures in the pool equally. This simplifying assumption could radically overestimate the granularity of a pool with numerous small exposures and one very large exposure. The effective exposure approach captures the notion that the risk profile of such an unbalanced pool is more like a pool of several medium-sized exposures than like a pool of a large number of equally sized small exposures.

For example, suppose Pool A contains four loans with EADs of $100 each. Under the formula set forth above, N for Pool A would be four, precisely equal to the actual number of exposures. Suppose Pool B also contains four loans: One loan with an EAD of $100 and three loans with an EAD of $1. Although both pools contain four loans, Pool B is much less diverse and granular than Pool A because Pool B is dominated by the presence of a single $100 loan. Intuitively, therefore, N for Pool B should be closer to one than to four. Under the formula in the rule, N for Pool B is calculated as follows:

$$\mathrm{N} = \frac{(100+1+1+1)^2}{100^2+1^2+1^2+1^2} = \frac{10,609}{10,003} = 1.06$$

As noted above, when calculating N for a re-securitization, a bank must treat each underlying securitization exposure as an exposure to a single obligor. This conservative treatment addresses the concern that AVCs among securitization exposures can be much greater than the AVCs among the underlying individual assets securing these securitization exposures. Because the framework's simple approach to re-securitizations may result in the differential treatment of economically similar securitization exposures, the agencies sought comment on alternative approaches for determining the N of a re-securitization. While a number of commenters urged that a bank be permitted to calculate N for re-securitizations of asset-backed securities by looking through to the underlying pools of assets securing these securities, none provided theoretical or empirical evidence to support this recommendation. Absent such evidence, the final rule remains consistent with New Accord's measurement of N for re-securitizations.

(vii) *Exposure-weighted average loss given default (EWALGD).* The EWALGD is calculated as:

$$EWALGD = \frac{\sum_i LGD_i \cdot EAD_i}{\sum_i EAD_i}$$

where LGD_i represents the average LGD associated with all exposures to the i^{th} obligor. In the case of a re-securitization, an LGD of 100 percent must be assumed for any underlying exposure that is a securitization exposure.

Although this treatment of EWALGD is consistent with the New Accord, several commenters asserted that assigning an LGD of 100 percent to all securitization exposures in the underlying pool was excessively conservative, particularly for underlying exposures that are senior, highly rated asset-backed securities. The agencies acknowledge that in many situations an LGD significantly lower than 100 percent may be appropriate. However, determination of the appropriate LGD depends on many complex factors, including the characteristics of the underlying assets and structural features of the securitization, such as the securitization exposure's thickness. Moreover, for thin securitization exposures or certain mezzanine positions backed by low-quality assets, the LGD may in fact be close to 100 percent. In this light, the agencies believe that any simple alternative to the New Accord's measurement of EWALGD would increase the potential for capital arbitrage, and any more risk-sensitive alternative would take considerable time to develop. Thus, the agencies have retained the proposed treatment, consistent with the New Accord.

Under certain conditions, a bank may employ the following simplifications to the SFA. First, for securitizations all of whose underlying exposures are retail exposures, a bank may set h=0 and v=0. In addition, if the share of a securitization corresponding to the largest underlying exposure (C_1) is no more than 0.03 (or 3 percent of the underlying exposures), then for purposes of the SFA the bank may set N equal to the following amount:

$$N = \frac{1}{C_1 C_m + \left(\frac{C_m - C_1}{m-1}\right)\max(1 - mC_1, 0)}$$

where C_m is the ratio of (i) the sum of the amounts of the largest ''m'' underlying exposures of the securitization; to (ii) UE. A bank may select the level of ''m'' using its discretion. For example, if the three largest underlying exposures of a securitization represent 15 percent of the pool of underlying exposures, C_3 for the securitization is 0.15. As an alternative simplification option, if only C_1 is available, and C_1 is no more than 0.03, then the bank may set $N=1/C_1$. Under both simplification options a bank may set EWALGD=0.50 unless one or more of the underlying exposures is a securitization exposure. If one or more of the underlying exposures is a securitization exposure, a bank using a simplification option must set EWALGD=1.

5. Eligible Market Disruption Liquidity Facilities

Under the proposed SFA, there was no special treatment provided for ABCP liquidity facilities that could be drawn upon only during periods of general market disruption. In contrast, the New Accord provides a more favorable capital treatment within the SFA for eligible market disruption liquidity facilities than for other liquidity facilities. Under the New Accord, an eligible market disruption liquidity facility is a liquidity facility that supports an ABCP program and that (i) is subject to an asset quality test that precludes funding of underlying exposures that are in default; (ii) can be used to fund only those exposures that have an investment-grade external rating at the time of funding, if the underlying exposures that the facility must fund against are externally rated exposures at the time that the exposures are sold to the program; and (iii) may only be drawn in the event of a general market disruption.

The agencies sought comment on the prevalence of eligible market disruption liquidity facilities that might be subject to the SFA and, by implication, whether the final rule should incorporate the treatment provided in the New Accord. Commenters responded that eligible market disruption liquidity facilities currently are not a material product line for U.S. banks, but urged international consistency in this area. To limit additional complexity in the final rule, and because U.S. banks have limited exposure to eligible market disruption liquidity facilities, the agencies are not including a separate treatment of eligible market disruption liquidity facilities in the final rule. The agencies believe that the final rule provides adequate flexibility to determine an appropriate capital requirement for market disruption liquidity facilities.

6. CRM for Securitization Exposures

The treatment of CRM for securitization exposures differs from that applicable to wholesale and retail exposures, and is largely unchanged from the proposal. An originating bank that has obtained a credit risk mitigant to hedge its securitization exposure to a synthetic or traditional securitization that satisfies the operational criteria in section 41 of the final rule may recognize the credit risk mitigant, but only as provided in section 46 of the final rule. An investing bank that has obtained a credit risk mitigant to hedge a securitization exposure also may recognize the credit risk mitigant, but only as provided in section 46. A bank that has used the RBA or IAA to calculate its risk-based capital requirement for a securitization exposure whose external or inferred rating (or equivalent internal rating under the IAA) reflects the benefits of a particular credit risk mitigant provided to the associated securitization or that supports some or all of the underlying exposures, however, may not use the securitization credit risk mitigation rules to further reduce its risk-based capital requirement for the exposure based on that credit risk mitigant. For example, a bank that owns a AAA-rated asset-backed security that benefits from an insurance wrap that is part of the securitization transaction must calculate its risk-based capital requirement for the security strictly under the RBA. No additional credit is given for the presence of the insurance wrap. On the other hand, if a bank owns a BBB-rated asset-backed security and obtains a credit default swap from a AAA-rated counterparty to protect the bank from losses on the security, the bank would be able to apply the securitization CRM rules to recognize the risk mitigating effects of the credit default swap and determine the risk-based capital requirement for the position.

As under the proposal, the final rule contains a treatment of CRM for securitization exposures separate from the treatment for wholesale and retail exposures because the wholesale and retail exposure CRM approaches rely on substitutions of, or adjustments to, the risk parameters of the hedged exposure. Because the securitization framework does not rely on risk parameters to determine risk-based capital requirements for securitization exposures, a different treatment of CRM for securitization exposures is necessary.

The securitization CRM rules, like the wholesale and retail CRM rules, address collateral separately from guarantees and credit derivatives. A bank is not permitted to recognize collateral other than financial collateral as a credit risk mitigant for securitization exposures. A bank may recognize financial collateral in determining the bank's risk-based capital requirement for a securitization exposure that is not a repo-style transaction, an eligible margin loan, or an OTC derivative for which the bank has reflected collateral in its determination of exposure amount under section 32 of the rule by using a collateral haircut approach. The bank's risk-based capital requirement for a collateralized securitization exposure is equal to the risk-based capital requirement for the securitization exposure as calculated under the RBA or the SFA multiplied by the ratio of adjusted exposure amount (SE*) to original exposure amount (SE),

Where:

(i) $SE^* = \max\{0, [SE - C \times (1 - Hs - Hfx)]\}$;

(ii) SE = the amount of the securitization exposure (as calculated under section 42(e) of the rule);

(iii) C = the current market value of the collateral;

(iv) Hs = the haircut appropriate to the collateral type; and

(v) Hfx = the haircut appropriate for any currency mismatch between the collateral and the exposure.

Where the collateral is a basket of different asset types or a basket of assets denominated in different currencies, the haircut on the basket is

$$H = \sum_i a_i H_i,$$

where a_i is the current market value of the asset in the basket divided by the current market value of all assets in the basket and H_i is the haircut applicable to that asset.

With the prior written approval of its primary Federal supervisor, a bank may calculate haircuts using its own internal estimates of market price volatility and foreign exchange volatility, subject to the requirements for use of own-estimates haircuts contained in section 32 of the rule. Banks that use own-estimates haircuts for collateralized securitization exposures must assume a minimum holding period (T_M) for securitization exposures of 65 business days.

A bank that does not qualify for and use own-estimates haircuts must use the collateral type haircuts (Hs) in Table 3 of the final rule and must use a currency mismatch haircut (Hfx) of 8 percent if the exposure and the collateral are denominated in different currencies. To reflect the longer-term nature of securitization exposures as compared to securities financing transactions, however, these standard supervisory haircuts (which are based on a ten-business-day holding period and daily marking-to-market and remargining) must be adjusted to a 65-business-day holding period (the approximate number of business days in a calendar quarter) by multiplying them by the square root of 6.5 (2.549510). A bank also must adjust the standard supervisory haircuts upward on the basis of a holding period longer than 65 business days where and as appropriate to take into account the illiquidity of the collateral.

A bank may only recognize an eligible guarantee or eligible credit derivative provided by an eligible securitization guarantor in determining the bank's risk-based capital requirement for a securitization exposure. The definitions of eligible guarantee and eligible credit derivative apply to both the wholesale and retail frameworks and the securitization framework. An eligible securitization guarantor is defined to mean (i) a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation (Farmer Mac), a multilateral development bank, a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), a bank holding company (as defined in section 2 of the Bank Holding Company Act (12 U.S.C. 1841)), a savings and loan holding company (as defined in 12 U.S.C. 1467a) provided all or substantially all of the holding company's activities are permissible for a financial holding company under 12 U.S.C. 1843(k)), a foreign bank (as defined in section 211.2 of the Federal Reserve Board's Regulation K (12 CFR 211.2)), or a securities firm; (ii) any other entity (other than a securitization SPE) that has issued and outstanding an unsecured long-term debt security without credit enhancement that has a long-term applicable external rating in one of the three highest investment-grade rating categories; or (iii) any other entity (other than a securitization SPE) that has a PD assigned by the bank that is lower than or equivalent to the PD associated with a long-term external rating in the third-highest investment-grade rating category.

A bank must use the following procedures if the bank chooses to recognize an eligible guarantee or eligible credit derivative provided by an eligible securitization guarantor in determining the bank's risk-based capital requirement for a securitization exposure. If the protection amount of the eligible guarantee or eligible credit derivative equals or exceeds the amount of the securitization exposure, the bank must set the risk-weighted asset amount for the securitization exposure equal to the risk-weighted asset amount for a direct exposure to the eligible securitization guarantor (as determined in the wholesale risk weight function described in section 31 of the final rule), using the bank's PD for the guarantor, the bank's LGD for the guarantee or credit derivative, and an EAD equal to the amount of the securitization exposure (as determined in section 42(e) of the final rule).

If the protection amount of the eligible guarantee or eligible credit derivative is less than the amount of the securitization exposure, the bank must divide the securitization exposure into two exposures in order to recognize the guarantee or credit derivative. The risk-weighted asset amount for the securitization exposure is equal to the sum of the risk-weighted asset amount for the covered portion and the risk-weighted asset amount for the uncovered portion. The risk-weighted asset amount for the covered portion is equal to the risk-weighted asset amount for a direct exposure to the eligible securitization guarantor (as determined in the wholesale risk weight function described in section 31 of the rule), using the bank's PD for the guarantor, the bank's LGD for the guarantee or credit derivative, and an EAD equal to the protection amount of the credit risk mitigant. The risk-weighted asset amount for the uncovered portion is equal to the product of (i) 1.0 minus the ratio of the protection amount of the eligible guarantee or eligible credit derivative divided by the amount of the securitization exposure; and (ii) the risk-weighted asset amount for the securitization exposure without the credit risk mitigant (as determined in sections 42–45 of the final rule).

For any hedged securitization exposure, the bank must make applicable adjustments to the protection amount as required by the maturity mismatch, currency mismatch, and lack of restructuring provisions in paragraphs (d), (e), and (f) of section 33 of the final rule. The agencies have clarified in the final rule that the mismatch provisions apply to any hedged securitization exposure and any more senior securitization exposure that benefits from the hedge. In the context of a synthetic securitization, when an eligible guarantee or eligible credit derivative covers multiple hedged exposures that have different residual maturities, the bank must use the longest residual maturity of any of the hedged exposures as the residual maturity of all the hedged exposures. If the risk-weighted asset amount for a guaranteed securitization exposure is greater than the risk-weighted asset amount for the securitization exposure without the guarantee or credit derivative, a bank may elect not to recognize the guarantee or credit derivative.

When a bank recognizes an eligible guarantee or eligible credit derivative provided by an eligible securitization guarantor in determining the bank's risk-based capital requirement for a securitization exposure, the bank also must (i) calculate ECL for the protected portion of the exposure using the same risk parameters that it uses for calculating the risk-weighted asset amount of the exposure (that is, the PD associated with the guarantor's rating grade, the LGD of the guarantee, and an EAD equal to the protection amount of the credit risk mitigant); and (ii) add this ECL to the bank's total ECL.

7. Synthetic Securitizations

Background

In a synthetic securitization, an originating bank uses credit derivatives or guarantees to transfer the credit risk, in whole or in part, of one or more underlying exposures to third-party protection providers. The credit derivative or guarantee may be either collateralized or uncollateralized. In the typical synthetic securitization, the underlying exposures remain on the balance sheet of the originating bank, but a portion of the originating bank's credit exposure is transferred to the protection provider or covered by collateral pledged by the protection provider.

In general, the final rule's treatment of synthetic securitizations is identical to that of traditional securitizations and to that described in the proposal. The operational requirements for synthetic securitizations are more detailed than those for traditional securitizations and are intended to ensure that the originating bank has truly transferred credit risk of the underlying exposures to one or more third-party protection providers.

Although synthetic securitizations typically employ credit derivatives, which might suggest that such transactions would be subject to the CRM rules in section 33 of the final rule, banks must apply the securitization framework when calculating risk-based capital requirements for a synthetic securitization exposure. Banks may ultimately be redirected to the securitization CRM rules to adjust the securitization framework capital requirement for an exposure to reflect the CRM technique used in the transaction.

Operational Requirements for Synthetic Securitizations

For synthetic securitizations, an originating bank may recognize for risk-based capital purposes the use of CRM to hedge, or transfer credit risk associated with, underlying exposures only if each of the following conditions is satisfied:

(i) The credit risk mitigant is financial collateral, an eligible credit derivative from an eligible securitization guarantor (defined above), or an eligible guarantee from an eligible securitization guarantor.

(ii) The bank transfers credit risk associated with the underlying exposures to third-party investors, and the terms and conditions in the credit risk mitigants employed do not include provisions that:

(A) Allow for the termination of the credit protection due to deterioration in the credit quality of the underlying exposures;

(B) Require the bank to alter or replace the underlying exposures to improve the credit quality of the underlying exposures;

(C) Increase the bank's cost of credit protection in response to deterioration in the credit quality of the underlying exposures;

(D) Increase the yield payable to parties other than the bank in response to a deterioration in the credit quality of the underlying exposures; or

(E) Provide for increases in a retained first loss position or credit enhancement provided by the bank after the inception of the securitization.

(iii) The bank obtains a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk mitigant in all relevant jurisdictions.

(iv) Any clean-up calls relating to the securitization are eligible clean-up calls (as discussed above).

Failure to meet the above operational requirements for a synthetic securitization prevents the originating bank from using the securitization framework and requires the originating bank to hold risk-based capital against the underlying exposures as if they had not been synthetically securitized. A bank that provides credit protection to a synthetic securitization must use the securitization framework to compute risk-based capital requirements for its exposures to the synthetic securitization even if the originating bank failed to meet one or more of the operational requirements for a synthetic securitization.

Consistent with the treatment of traditional securitization exposures, a bank must use the RBA for synthetic securitization exposures that have an appropriate number of external or inferred ratings. For an originating bank, the RBA will typically be used only for the most senior tranche of the securitization, which often has an inferred rating. If a bank has a synthetic securitization exposure that does not have an external or inferred rating, the bank must apply the SFA to the exposure (if the bank and the exposure qualify for use of the SFA) without considering any CRM obtained as part of the synthetic securitization. Then, if the bank has obtained a credit risk mitigant on the exposure as part of the synthetic securitization, the bank may apply the securitization CRM rules to reduce its risk-based capital requirement for the exposure. For example, if the credit risk mitigant is financial collateral, the bank may use the standard supervisory or own-estimates haircuts to reduce its risk-based capital requirement. If the bank is a protection provider to a synthetic securitization and has obtained a credit risk mitigant on its exposure, the bank may also apply the securitization CRM rules in section 46 of the final rule to reduce its risk-based capital requirement on the exposure. If neither the RBA nor the SFA is available, a bank must deduct the exposure from regulatory capital.

First-Loss Tranches

If a bank has a first-loss position in a pool of underlying exposures in connection with a synthetic securitization, the bank must deduct the position from regulatory capital unless (i) the position qualifies for use of the RBA or (ii) the bank and the position qualify for use of the SFA and K_{IRB} is greater than L.

Mezzanine Tranches

In a typical synthetic securitization, an originating bank obtains credit protection on a mezzanine, or second-loss, tranche of a synthetic securitization by either (i) obtaining a credit default swap or financial guarantee from a third-party financial institution; or (ii) obtaining a credit default swap or financial guarantee from an SPE whose obligations are secured by financial collateral.

For a bank that creates a synthetic mezzanine tranche by obtaining an eligible credit derivative or guarantee from an eligible securitization guarantor, the bank generally will treat the notional amount of the credit derivative or guarantee (as adjusted to reflect any maturity mismatch, lack of restructuring coverage, or currency mismatch) as a wholesale exposure to the protection provider and use the IRB approach for wholesale exposures to determine the bank's risk-based capital requirement for the exposure. A bank that creates the synthetic mezzanine tranche by obtaining from a non-eligible securitization guarantor a guarantee or credit derivative that is collateralized by financial collateral generally will (i) first use the SFA to calculate the risk-based capital requirement on the exposure (ignoring the guarantee or credit derivative and the associated collateral); and (ii) then use the securitization CRM rules to calculate any reductions to the risk-based capital requirement resulting from the associated collateral. The bank may look only to the protection provider from which it obtains the guarantee or credit derivative when determining its risk-based capital requirement for the exposure (that is, if the protection provider hedges the guarantee or credit derivative with a guarantee or credit derivative from a third party, the bank may not look through the protection provider to that third party when calculating its risk-based capital requirement for the exposure).

For a bank providing credit protection on a mezzanine tranche of a synthetic securitization, the bank must use the RBA to determine the risk-based capital requirement for the exposure if the exposure has an external or inferred rating. If the exposure does not have an external or inferred rating and the exposure qualifies for use of the SFA, the bank may use the SFA to calculate the risk-based capital requirement for the exposure. If neither the RBA nor the SFA are available, the bank must deduct the exposure from regulatory capital. If a bank providing credit protection on the mezzanine tranche of a synthetic securitization obtains a credit risk mitigant to hedge its exposure, the bank may apply the securitization CRM rules to reflect the risk reduction achieved by the credit risk mitigant.

Super-Senior Tranches

A bank that has the most senior position in a pool of underlying exposures in connection with a synthetic securitization must use the RBA to calculate its risk-based capital requirement for the exposure if the exposure has at least one external or inferred rating (in the case of an investing bank) or at least two external or inferred ratings (in the case of an originating bank). If the super-senior tranche does not have an external or inferred rating and the bank and the exposure qualify for use of the SFA, the bank may use the SFA to calculate the risk-based capital requirement for the exposure. If neither the RBA nor the SFA are available, the bank must deduct the exposure from regulatory capital. If an investing bank in the super-senior tranche of a synthetic securitization obtains a credit risk mitigant to hedge its exposure, however, the investing bank may apply the securitization CRM rules to reflect the risk reduction achieved by the credit risk mitigant.

8. N^{th}-to-Default Credit Derivatives

Credit derivatives that provide credit protection only for the n^{th} defaulting reference exposure in a group of reference exposures (n^{th}-to-default credit derivatives) are similar to synthetic securitizations that provide credit protection only after the first-loss tranche has defaulted or become a loss. A simplified treatment is available to banks that purchase and provide such credit protection. A bank that obtains credit protection on a group of underlying exposures through a first-to-default credit derivative must determine its risk-based capital requirement for the underlying exposures as if the bank had synthetically securitized only the underlying exposure with the lowest capital requirement and had obtained no credit risk mitigant on the other (higher capital requirement) underlying exposures. If the bank purchases credit protection on a group of underlying exposures through an n^{th}-to-default credit derivative (other than a first-to-default credit derivative), it may only recognize the credit protection for risk-based capital purposes either if it has obtained credit protection on the same underlying exposures in the form of first-through-(n-1)-to-default credit derivatives, or if n-1 of the underlying exposures have already defaulted. In such a case, the bank must again determine its risk-based capital requirement for the underlying exposures as if the bank had only synthetically securitized the n-1 underlying exposures with the lowest capital requirement and had obtained no credit risk mitigant on the other underlying exposures.

A bank that provides credit protection on a group of underlying exposures through a first-to-default credit derivative must determine its risk-weighted asset amount for the derivative by applying the RBA (if the derivative qualifies for the RBA) or, if the derivative does not qualify for the RBA, by setting its risk-weighted asset amount for the derivative equal to the product of (i) the protection amount of the derivative; (ii) 12.5; and (iii) the sum of the risk-based capital requirements of the individual underlying exposures, up to a maximum of 100 percent. If a bank provides credit protection on a group of underlying exposures through an n^{th}-to-default credit derivative (other than a first-to-default credit derivative), the bank must determine its risk-weighted asset amount for the derivative by applying the RBA (if the derivative qualifies for the RBA) or, if the derivative does not qualify for the RBA, by setting the risk-weighted asset amount for the derivative equal to the product of (i) the protection amount of the derivative; (ii) 12.5; and (iii) the sum of the risk-based capital requirements of the individual underlying exposures (excluding the n-1 underlying exposures with the lowest risk-based capital requirements), up to a maximum of 100 percent.

For example, a bank provides credit protection in the form of a second-to-default credit derivative on a basket of five reference exposures. The derivative is unrated and the protection amount of the derivative is \$100. The risk-based capital requirements of the underlying exposures are 2.5 percent, 5.0 percent, 10.0 percent, 15.0 percent, and 20 percent. The risk-weighted asset amount of the derivative would be $\$100 \times 12.5 \times (.05 + .10 + .15 + .20)$ or \$625. If the derivative were externally rated in the lowest investment-grade rating category with a positive designation, the risk-weighted asset amount would be $\$100 \times 0.50$ or \$50.

9. Early Amortization Provisions

Background

Many securitizations of revolving credit facilities (for example, credit card receivables) contain provisions that require the securitization to be wound down and investors to be repaid if the excess spread falls below a certain threshold.[100] This decrease in excess spread may, in some cases, be caused by deterioration in the credit quality of the underlying exposures. An early amortization event can increase a bank's capital needs if new draws on the revolving credit facilities need to be financed by the bank using on-balance sheet sources of funding. The payment allocations used to distribute principal and finance charge collections during the amortization phase of these transactions also can expose a bank to greater risk of loss than in other securitization transactions. The final rule, consistent with the proposed rule, assesses a risk-based capital requirement that, in general, is linked to the likelihood of an early amortization event to address the risks that early amortization of a securitization poses to originating banks.

Consistent with the proposed rule, the final rule defines an early amortization provision as a provision in a securitization's governing documentation that, when triggered, causes investors in the securitization exposures to be repaid before the original stated maturity of the securitization exposure, unless the provision is solely triggered by events not related to the performance of the underlying exposures or the originating bank (such as material changes in tax laws or regulations).

Under the proposed rule, a bank would not be required to hold regulatory capital against the investors' interest if early amortization is solely triggered by events not related to the performance of the underlying exposures or the originating bank, such as material changes in tax laws or regulation. Under the New Accord, a bank is also not required to hold regulatory capital against the investors' interest if (i) the securitization has a replenishment structure in which the individual underlying exposures do not revolve and the early amortization ends the ability of the originating bank to add new underlying exposures to the securitization; (ii) the securitization involves revolving assets and contains early amortization features that mimic term structures; or (iii) investors in the securitization remain fully exposed to future draws by borrowers on the underlying exposures even after the occurrence of early amortization. The agencies sought comment on the appropriateness of these additional exemptions in the U.S. markets for revolving securitizations. Most commenters asserted that the exemptions provided in the New Accord are prudent and should be adopted by the agencies in order to avoid placing U.S. banking organizations at a competitive disadvantage relative to foreign competitors. The agencies generally agree with this view of exemption (iii), above, and the definition of early amortization provision in the final rule incorporates this exemption. The

[100] The final rule defines excess spread for a period as gross finance charge collections and other income received by the securitization SPE (including market interchange fees) over the period minus interest paid to holders of securitization exposures, servicing fees, charge-offs, and other senior trust similar expenses of the securitization SPE over the period, divided by the principal balance of the underlying exposures at the end of the period.

agencies have not included exemption (i) or (ii). The agencies do not believe that the exemption for non-revolving exposures is meaningful because the early amortization provisions apply only to securitizations with revolving underlying exposures. The agencies also do not believe that the exemption for early amortization features that mimic term structures is meaningful in the U.S. market.

Under the final rule, as under the proposed rule, an originating bank must generally hold risk-based capital against the sum of the originating bank's interest and the investors' interest arising from a securitization that contains an early amortization provision. An originating bank must compute its capital requirement for its interest using the hierarchy of approaches for securitization exposures as described above. The originating bank's risk-weighted asset amount for the investors' interest in the securitization is equal to the product of the following five quantities: (i) The EAD associated with the investors' interest; (ii) the appropriate CF as determined below; (iii) K_{IRB}; (iv) 12.5; and (v) the proportion of the underlying exposures in which the borrower is permitted to vary the drawn amount within an agreed limit under a line of credit. The agencies added (v) to the final rule because, for securitizations containing both revolving and non-revolving underlying exposures, only the revolving underlying exposures give rise to the risk of early amortization.

Under the final rule, consistent with the proposal, the investors' interest with respect to a revolving securitization captures both the drawn balances and undrawn lines of the underlying exposures that are allocated to the investors in the securitization. The EAD associated with the investors' interest is equal to the EAD of the underlying exposures multiplied by the ratio of:

(i) The total amount of securitization exposures issued by the securitization SPE to investors; divided by

(ii) The outstanding principal amount of underlying exposures.

In general, the applicable CF depends on whether the early amortization provision repays investors through a controlled or non-controlled mechanism and whether the underlying exposures are revolving retail credit facilities that are uncommitted (unconditionally cancelable by the bank to the fullest extent of Federal law, such as credit card receivables) or are other revolving credit facilities (for example, revolving corporate credit facilities). Consistent with the New Accord, under the proposed rule a controlled early amortization provision would meet each of the following conditions:

(i) The originating bank has appropriate policies and procedures to ensure that it has sufficient capital and liquidity available in the event of an early amortization;

(ii) Throughout the duration of the securitization (including the early amortization period) there is the same pro rata sharing of interest, principal, expenses, losses, fees, recoveries, and other cash flows from the underlying exposures, based on the originating bank's and the investors' relative shares of the underlying exposures outstanding measured on a consistent monthly basis;

(iii) The amortization period is sufficient for at least 90 percent of the total underlying exposures outstanding at the beginning of the early amortization period to have been repaid or recognized as in default; and

(iv) The schedule for repayment of investor principal is not more rapid than would be allowed by straight-line amortization over an 18-month period.

An early amortization provision that does not meet any of the above criteria is a non-controlled early amortization provision.

The agencies solicited comment on the distinction between controlled and non-controlled early amortization provisions and on the extent to which banks use controlled early amortization provisions. The agencies also invited comment on the proposed definition of a controlled early amortization provision, including in particular the 18-month period set forth above. Commenters generally believed that very few, if any, revolving securitizations would meet the criteria needed to qualify for treatment as a controlled early amortization structure. One commenter maintained that a fixed 18-month straight-line amortization period was too long for certain exposures, such as prime credit cards.

The final rule is unchanged from the proposal with respect to controlled and non-controlled early amortization provisions. The agencies believe that the proposed eligibility criteria for a controlled early amortization are important indicators of the risks to which an originating bank would be exposed in the event of any early amortization. While a fixed 18-month straight-line amortization period is unlikely to be the most appropriate period in all cases, it is a reasonable period for the vast majority of cases. The lower operational burden of using a single, fixed amortization period warrants the potential diminution in risk-sensitivity.

Controlled Early Amortization

Under the proposed rule, to calculate the appropriate CF for a securitization of uncommitted revolving retail exposures that contains a *controlled* early amortization provision, a bank would compare the three-month average annualized excess spread for the securitization to the point at which the bank is required to trap excess spread under the securitization transaction. In securitizations that do not require excess spread to be trapped, or that specify a trapping point based primarily on performance measures other than the three-month average annualized excess spread, the excess spread trapping point was 4.5 percent. The bank would divide the three-month average annualized excess spread level by the excess spread trapping point and apply the appropriate CF from Table H.

TABLE H.—CONTROLLED EARLY AMORTIZATION PROVISIONS

	Uncommitted	Committed
Retail Credit Lines	Three-month average annualized excess spread, Conversion Factor (CF) 133.33% of trapping point or more, 0% CF. less than 133.33% to 100% of trapping point, 1% CF. less than 100% to 75% of trapping point, 2% CF. less than 75% to 50% of trapping point, 10% CF. less than 50% to 25% of trapping point, 20% CF less than 25% of trapping point, 40% CF.	90% CF
Non-retail Credit Lines	90% CF	90% CF

A bank would apply a 90 percent CF for all other revolving underlying exposures (committed exposures and nonretail exposures) in securitizations containing a controlled early amortization provision. The proposed CFs for uncommitted revolving retail credit lines were much lower than for committed retail credit lines or for non-retail credit lines because of the demonstrated ability of banks to monitor and, when appropriate, to curtail promptly uncommitted retail credit lines for customers of deteriorating credit quality. Such account management tools are unavailable for committed lines, and banks may be less proactive about using such tools in the case of uncommitted non-retail credit lines owing to lender liability concerns and the prominence of broad-based, longer-term customer relationships.

Non-controlled Early Amortization

Under the proposed rule, to calculate the appropriate CF for securitizations of uncommitted revolving retail exposures that contain a *non-controlled* early amortization provision, a bank would perform the excess spread calculations described in the controlled early amortization section above and then apply the CFs in Table I.

TABLE I.—NON-CONTROLLED EARLY AMORTIZATION PROVISIONS

	Uncommitted	Committed
Retail Credit Lines	Three-month average annualized excess spread, Conversion Factor (CF) 133.33% of trapping point or more, 0% CF. less than 133.33% to 100% of trapping point, 5% CF. less than 100% to 75% of trapping point, 15% CF. less than 75% to 50% of trapping point, 50% CF. less than 50% of trapping point, 100% CF.	100% CF
Non-retail Credit Lines	100% CF	100% CF

A bank would use a 100 percent CF for all other revolving underlying exposures (committed exposures and nonretail exposures) in securitizations containing a *non-controlled* early amortization provision. In other words, no risk transference would be recognized for these transactions; an originating bank's IRB capital requirement would be the same as if the underlying exposures had not been securitized.

A few commenters asserted that the proposed CFs were too high. The agencies believe, however, that the proposed CFs appropriately capture the risk to the bank of a potential early amortization event. The agencies also believe that the proposed CFs, which are consistent with the New Accord, foster consistency across national jurisdictions. Therefore, the agencies are maintaining the proposed CFs in the final rule with one exception, discussed below.

In circumstances where a securitization contains a mix of retail and nonretail exposures or a mix of committed and uncommitted exposures, a bank may take a pro rata approach to determining the CF for the securitization's early amortization provision. If a pro rata approach is not feasible, a bank must treat the securitization as a securitization of nonretail exposures if a single underlying exposure is a nonretail exposure and must treat the securitization as a securitization of committed exposures if a single underlying exposure is a committed exposure.

Securitizations of Revolving Residential Mortgage Exposures

The agencies sought comment on the appropriateness of the proposed 4.5 percent excess spread trapping point and on whether there were other types and levels of early amortization triggers used in securitizations of revolving retail exposures that should be addressed by the agencies. Although some commenters believed the 4.5 percent trapping point assumption was reasonable, others believed that it was inappropriate for securitizations of HELOCs. Unlike credit card securitizations, U.S. HELOC securitizations typically do not generate material excess spread and typically are structured with credit enhancements and early amortization triggers based on other factors, such as portfolio loss rates. Under the proposed treatment, banks would be required to hold capital against the potential early amortization of most U.S. HELOC securitizations at their inception, rather than only if the credit quality of the underlying exposures deteriorated. Although the New Accord does not provide an alternative methodology, the agencies concluded that the features of the U.S. HELOC securitization market warrant an alternative approach. Accordingly, the final rule allows a bank the option of applying either (i) the CFs in Tables I and J, as appropriate, or (ii) a fixed CF equal to 10 percent to its securitizations for which all or substantially all of the underlying exposures are revolving residential mortgage exposures. If a bank chooses the fixed CF of 10 percent, it must use that CF for all securitizations for which all or substantially all of the underlying exposures are revolving residential mortgage exposures. The agencies will monitor the implementation of this alternative approach to ensure that it is consistent with safety and soundness.

F. Equity Exposures

1. Introduction and Exposure Measurement

This section describes the final rule's risk-based capital treatment for equity exposures. Consistent with the proposal, under the final rule, a bank has the option to use either a simple risk-weight approach (SRWA) or an internal models approach (IMA) for equity exposures that are not exposures to an investment fund. A bank must use a look-through approach for equity exposures to an investment fund.

Although the New Accord provides national supervisors the option to provide a grandfathering period for equity exposures—whereby for a maximum of ten years, supervisors could permit banks to exempt from the IRB treatment equity investments held at the time of the publication of the New Accord—the proposed rule did not include such a grandfathering provision. A number of commenters asserted that the proposal was inconsistent with the New Accord and would subject banks using the agencies' advanced approaches to significant competitive inequity.

The agencies continue to believe that it is not appropriate or necessary to incorporate the New Accord's optional ten-year grandfathering period for equity exposures. The grandfathering concept would reduce the risk sensitivity of the SRWA and IMA. Moreover, the IRB approach does not provide grandfathering for other types of exposures, and the agencies see no compelling reason to do so for equity exposures. Further, the agencies believe that the overall final rule approach to equity exposures sufficiently mitigates potential competitive issues. Accordingly, the final rule does not provide a grandfathering period for equity exposures.

Under the proposed SRWA, a bank generally would assign a 300 percent risk weight to publicly traded equity exposures and a 400 percent risk weight to non-publicly traded equity exposures. Certain equity exposures to sovereigns, multilateral institutions, and public sector enterprises would have a risk weight of 0 percent, 20 percent, or 100 percent; and certain community development equity exposures, hedged equity exposures, and, up to certain limits, non-significant equity exposures would receive a 100 percent risk weight.

Alternatively, under the proposed rule, a bank that met certain minimum quantitative and qualitative requirements on an ongoing basis and obtained the prior written approval of its primary Federal supervisor could use the IMA to determine its risk-based capital requirement for all modeled equity exposures. A bank that qualified to use the IMA could apply the IMA to its publicly traded and non-publicly traded equity exposures, or could apply the IMA only to its publicly traded equity exposures. However, if the bank applied the IMA to its publicly traded equity exposures, it would be required to apply the IMA to all such exposures. Similarly, if a bank applied the IMA to both publicly traded and non-publicly traded equity exposures, it would be required to apply the IMA to all such exposures. If a bank did not qualify to use the IMA, or elected not to use the IMA, to compute its risk-based capital requirements for equity exposures, the bank would apply the SRWA to assign risk weights to its equity exposures.

Several commenters objected to the proposed restrictions on the use of the IMA. Commenters asserted that banks should be able to apply the SRWA and the IMA for different portfolios or subsets of equity exposures, provided that banks' choices are consistent with internal risk management practices.

The agencies have not relaxed the proposed restrictions regarding use of the SRWA and IMA. The agencies remain concerned that if banks are permitted to employ either the SRWA or IMA to different equity portfolios, banks could choose one approach over the other to manipulate their risk-based capital requirements and not for risk management purposes. In addition, because of concerns about lack of transparency, it is not prudent to allow a bank to apply the IMA only to its non-publicly traded equity exposures and not its publicly traded equity exposures.

The proposed rule defined publicly traded to mean traded on (i) any exchange registered with the SEC as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) or (ii) any non-U.S.-based securities exchange that is registered with, or approved by, a national securities regulatory authority and that provides a liquid, two-way market for the exposure (that is, there are enough independent bona fide offers to buy and sell so that a sales price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and a trade can be settled at such a price within five business days).

Several commenters explicitly supported the proposed definition of publicly traded, noting that it is reasonable and consistent with industry practice. Other commenters requested that the agencies revise the proposed definition by eliminating the requirement that a non-U.S.-based securities exchange provide a liquid, two-way market for the exposure. Commenters asserted that this requirement goes beyond the definition in the New Accord, which defines a publicly traded equity exposure as any equity security traded on a recognized security exchange. They asserted that registration with or approval by the national securities regulatory authority should suffice, as registration or approval generally would be predicated on the existence of a two-way market.

The agencies have retained the definition of publicly traded as proposed. The agencies believe that the liquid, two-way market requirement is not in addition to the requirements of the New Accord. Rather, this requirement clarifies the intent of ''traded'' in the New Accord and helps to ensure that a sales price reasonably related to the last sales price or competitive bid and offer quotations can be determined promptly and settled within five business days.

A bank using either the IMA or the SRWA must determine the adjusted carrying value for each equity exposure. The proposed rule defined the adjusted carrying value of an equity exposure as:

(i) For the on-balance sheet component of an equity exposure, the bank's carrying value of the exposure reduced by any unrealized gains on the exposure that are reflected in such carrying value but excluded from the bank's tier 1 and tier 2 capital;[101] and

(ii) For the off-balance sheet component of an equity exposure, the effective notional principal amount of the exposure, the size of which is equivalent to a hypothetical on-balance sheet position in the underlying equity instrument that would evidence the same change in fair value (measured in dollars) for a given small change in the price of the underlying equity instrument, minus the adjusted carrying value of the on-balance sheet component of the exposure as calculated in (i).

Commenters generally supported the proposed definition of adjusted carrying value and the agencies are adopting the definition as proposed with one minor clarification regarding unfunded equity commitments (discussed below).

The agencies created the definition of the effective notional principal amount of the off-balance sheet portion of an equity exposure to provide a uniform method for banks to measure the on-balance sheet equivalent of an off-balance sheet exposure. For example, if the value of a derivative contract referencing the common stock of company X changes the same amount as the value of 150 shares of common stock of company X, for a small (for example, 1 percent) change in the value of the common stock of company X, the effective notional principal amount of the derivative contract is the current value of 150 shares of common stock of company X regardless of the number of shares the derivative contract references. The adjusted carrying value of the off-balance sheet component of the derivative is the current value of 150 shares of common stock of company X minus the adjusted carrying value of any on-balance sheet amount associated with the derivative.

The final rule clarifies the determination of the effective notional principal amount of unfunded equity commitments. Under the final rule, for an unfunded equity commitment that is unconditional, a bank must use the notional amount of the commitment. If the unfunded equity commitment is conditional, the bank must use its best estimate of the amount that would be funded during economic downturn conditions.

[101] The potential downward adjustment to the carrying value of an equity exposure reflects the fact that 100 percent of the unrealized gains on available-for-sale equity exposures are included in carrying value but only up to 45 percent of any such unrealized gains are included in regulatory capital.

Hedge Transactions

The agencies proposed specific rules for recognizing hedged equity exposures; they received no substantive comment on these rules and are adopting these rules as proposed. For purposes of determining risk-weighted assets under both the SRWA and the IMA, a bank may identify hedge pairs, which the final rule defines as two equity exposures that form an effective hedge provided each equity exposure is publicly traded or has a return that is primarily based on a publicly traded equity exposure. A bank may risk weight only the effective and ineffective portions of a hedge pair rather than the entire adjusted carrying value of each exposure that makes up the pair. Two equity exposures form an effective hedge if the exposures either have the same remaining maturity or each has a remaining maturity of at least three months; the hedge relationship is documented formally before the bank acquires at least one of the equity exposures; the documentation specifies the measure of effectiveness (E) (defined below) the bank will use for the hedge relationship throughout the life of the transaction; and the hedge relationship has an E greater than or equal to 0.8. A bank must measure E at least quarterly and must use one of three alternative measures of E—the dollar-offset method, the variability-reduction method, or the regression method.

It is possible that only part of a bank's exposure to a particular equity instrument is part of a hedge pair. For example, assume a bank has an equity exposure A with a $300 adjusted carrying value and chooses to hedge a portion of that exposure with an equity exposure B with an adjusted carrying value of $100. Also assume that the combination of equity exposure B and $100 of the adjusted carrying value of equity exposure A form an effective hedge with an E of 0.8. In this situation the bank would treat $100 of equity exposure A and $100 of equity exposure B as a hedge pair, and the remaining $200 of its equity exposure A as a separate, stand-alone equity position.

The effective portion of a hedge pair is E multiplied by the greater of the adjusted carrying values of the equity exposures forming the hedge pair, and the ineffective portion is (1-E) multiplied by the greater of the adjusted carrying values of the equity exposures forming the hedge pair. In the above example, the effective portion of the hedge pair would be $0.8 \times \$100 = \$80$ and the ineffective portion of the hedge pair would be $(1 - 0.8) \times \$100 = \$20$.

Measures of Hedge Effectiveness

Under the dollar-offset method of measuring effectiveness, the bank must determine the ratio of the cumulative sum of the periodic changes in the value of one equity exposure to the cumulative sum of the periodic changes in the value of the other equity exposure, termed the ratio of value change (RVC). If the changes in the values of the two exposures perfectly offset each other, the RVC will be −1. If RVC is positive, implying that the values of the two equity exposures move in the same direction, the hedge is not effective and E = 0. If RVC is negative and greater than or equal to −1 (that is, between zero and −1), then E equals the absolute value of RVC. If RVC is negative and less than −1, then E equals 2 plus RVC.

The variability-reduction method of measuring effectiveness compares changes in the value of the combined position of the two equity exposures in the hedge pair (labeled X) to changes in the value of one exposure as though that one exposure were not hedged (labeled A). This measure of E expresses the time-series variability in X as a proportion of the variability of A. As the variability described by the numerator becomes small relative to the variability described by the denominator, the measure of effectiveness improves, but is bounded from above by a value of one. E is computed as:

$$E = 1 - \frac{\sum_{t=1}^{T}\left(X_t - X_{t-1}\right)^2}{\sum_{t=1}^{T}\left(A_t - A_{t-1}\right)^2}, \text{ where}$$

$X_t = A_t - B_t$

A_t = the value at time t of the one exposure in a hedge pair, and

B_t = the value at time t of the other exposure in the hedge pair.

The value of t will range from zero to T, where T is the length of the observation period for the values of A and B, and is comprised of shorter values each labeled t.

The regression method of measuring effectiveness is based on a regression in which the change in value of one exposure in a hedge pair is the dependent variable and the change in value of the other exposure in the hedge pair is the independent variable. E equals the coefficient of determination of this regression, which is the proportion of the variation in the dependent variable explained by variation in the independent variable. However, if the estimated regression coefficient is positive, then the value of E is zero. The closer the relationship between the values of the two exposures, the higher E will be.

2. Simple Risk-Weight Approach (SRWA)

Under the SRWA in section 52 of the proposed rule, a bank would determine the risk-weighted asset amount for each equity exposure, other than an equity exposure to an investment fund, by multiplying the adjusted carrying value of the equity exposure, or the effective portion and ineffective portion of a hedge pair as described above, by the lowest applicable risk weight in Table J. A bank would determine the risk-weighted asset amount for an equity exposure to an investment fund under section 54 of the proposed rule.

If a bank exclusively uses the SRWA for its equity exposures, the bank's aggregate risk-weighted asset amount for its equity exposures (other than equity exposures to investment funds) would be equal to the sum of the risk-weighted asset amounts for each of the bank's individual equity exposures.

TABLE J

Risk weight	Equity exposure
0 Percent	An equity exposure to an entity whose credit exposures are exempt from the 0.03 percent PD floor.

TABLE J—Continued

Risk weight	Equity exposure
20 Percent	An equity exposure to a Federal Home Loan Bank or Farmer Mac if the equity exposure is not publicly traded and is held as a condition of membership in that entity.
100 Percent	• Community development equity exposures. • An equity exposure to a Federal Home Loan Bank or Farmer Mac not subject to a 20 percent risk weight. • The effective portion of a hedge pair. • Non-significant equity exposures to the extent less than 10 percent of tier 1 plus tier 2 capital.
300 Percent	A publicly traded equity exposure (including the ineffective portion of a hedge pair).
400 Percent	An equity exposure that is not publicly traded.

Several commenters addressed the proposed risk weights under the SRWA. A few commenters asserted that the 100 percent risk weight for the effective portion of a hedge pair is too high. These commenters suggested that the risk weight for such exposures should be zero or no more than 7 percent because the effectively hedged portion of a hedge pair involves negligible credit risk. One commenter remarked that it does not believe there is an economic basis for the different risk weight for an equity exposure to a Federal Home Loan Bank depending on whether the equity exposure is held as a condition of membership.

The agencies do not agree with commenters' assertion that the effective portion of a hedge pair entails negligible credit risk. The agencies believe the 100 percent risk weight under the proposal is an appropriate and prudential safeguard; thus, it is maintained in the final rule. Banks that seek to more accurately account for equity hedging in their risk-based capital requirements should use the IMA.

The agencies agree that different risk weights for an equity exposure to a Federal Home Loan Bank or Farmer Mac depending on whether the equity exposure is held as a condition of membership do not have an economic justification, given the similar risk profile of the exposures. Accordingly, under the final rule SRWA, all equity exposures to a Federal Home Loan Bank or to Farmer Mac receive a 20 percent risk weight.

Non-significant Equity Exposures

Under the SRWA, a bank may apply a 100 percent risk weight to non-significant equity exposures. The proposed rule defined non-significant equity exposures as equity exposures to the extent that the aggregate adjusted carrying value of the exposures did not exceed 10 percent of the bank's tier 1 capital plus tier 2 capital.

Several commenters objected to the 10 percent materiality threshold for determining significance. They asserted that this standard is more conservative than the 15 percent threshold under the OCC, FDIC, and Board general risk-based capital rules for nonfinancial equity investments.

The agencies note that the applicable general risk-based capital rules address only nonfinancial equity investments; that the 15 percent threshold is a percentage only of tier 1 capital; and that the 15 percent threshold was designed for that particular rule. The proposed materiality threshold of 10 percent of tier 1 plus tier 2 capital is consistent with the New Accord and is intended to identify non-significant holdings of equity exposures under a different type of capital framework. Thus, the two threshold limits are not directly comparable. The agencies believe that the proposed 10 percent threshold for determining non-significant equity exposures is appropriate for the advanced approaches and, thus, are adopting it as proposed.

As discussed above in preamble section V.A.3., the agencies have discretion under the final rule to exclude from the definition of a traditional securitization those investment firms that exercise substantially unfettered control over the size and composition of their assets, liabilities, and off-balance sheet exposures. Equity exposures to investment firms that would otherwise be a traditional securitization were it not for the specific agency exclusion are leveraged exposures to the underlying financial assets of the investment firm. The agencies believe that equity exposure to such firms with greater than immaterial leverage warrant a 600 percent risk weight under the SRWA, due to their particularly high risk. Moreover, the agencies believe that the 100 percent risk weight assigned to non-significant equity exposures is inappropriate for equity exposures to investment firms with greater than immaterial leverage.

Under the final rule, to compute the aggregate adjusted carrying value of a bank's equity exposures for determining non-significance, the bank may exclude (i) equity exposures that receive less than a 300 percent risk weight under the SRWA (other than equity exposures determined to be non-significant); (ii) the equity exposure in a hedge pair with the smaller adjusted carrying value; and (iii) a proportion of each equity exposure to an investment fund equal to the proportion of the assets of the investment fund that are not equity exposures or that qualify as community development equity exposures. If a bank does not know the actual holdings of the investment fund, the bank may calculate the proportion of the assets of the fund that are not equity exposures based on the terms of the prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. If the sum of the investment limits for all exposure classes within the fund exceeds 100 percent, the bank must assume that the investment fund invests to the maximum extent possible in equity exposures.

When determining which of a bank's equity exposures qualify for a 100 percent risk weight based on non-significance, a bank first must include equity exposures to unconsolidated small business investment companies or held through consolidated small business investment companies described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682), then must include publicly traded equity exposures (including those held indirectly through investment funds), and then must include non-publicly traded equity exposures (including those held indirectly through investment funds).

The SRWA is summarized in Table K:

TABLE K

Risk weight	Equity exposure
0 Percent	An equity exposure to an entity whose credit exposures are exempt from the 0.03 percent PD floor.
20 Percent	An equity exposure to a Federal Home Loan Bank or Farmer Mac.
100 Percent	• Community development equity exposures.[102] • The effective portion of a hedge pair. • Non-significant equity exposures to the extent less than 10 percent of tier 1 plus tier 2 capital.
300 Percent	A publicly traded equity exposure (other than an equity exposure that receives a 600 percent risk weight and including the ineffective portion of a hedge pair).
400 Percent	An equity exposure that is not publicly traded (other than an equity exposure that receives a 600 percent risk weight).
600 percent	An equity exposure to an investment firm that (1) would meet the definition of a traditional securitization were it not for the primary Federal supervisor's application of paragraph (8) of that definition and (2) has greater than immaterial leverage.

[102] The final rule generally defines these exposures as exposures that would qualify as community development investments under 12 U.S.C. 24(Eleventh), excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a consolidated small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682). For savings associations, community development investments would be defined to mean equity investments that are designed primarily to promote community welfare, including the welfare of low- and moderate-income communities or families, such as by providing services or jobs, and excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a consolidated small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682).

3. Internal Models Approach (IMA)

The IMA is designed to provide banks with a more sophisticated and risk-sensitive mechanism for calculating risk-based capital requirements for equity exposures. To qualify to use the IMA, a bank must receive prior written approval from its primary Federal supervisor. To receive such approval, the bank must demonstrate to its primary Federal supervisor's satisfaction that the bank meets the quantitative and qualitative criteria discussed below. As noted earlier, a bank may model both publicly traded and non-publicly traded equity exposures or model only publicly traded equity exposures.

In the final rule, the agencies clarify that under the IMA, a bank may use more than one model, as appropriate for its equity exposures, provided that it has received supervisory approval for use of the IMA, and each model meets the qualitative and quantitative criteria specified below and in section 53 of the rule.

IMA Qualification

The bank must have one or more models that (i) assess the potential decline in value of its modeled equity exposures; (ii) are commensurate with the size, complexity, and composition of the bank's modeled equity exposures; and (iii) adequately capture both general market risk and idiosyncratic risks. The bank's models must produce an estimate of potential losses for its modeled equity exposures that is no less than the estimate of potential losses produced by a VaR methodology employing a 99.0 percent one-tailed confidence interval of the distribution of quarterly returns for a benchmark portfolio of equity exposures comparable to the bank's modeled equity exposures using a long-term sample period. Banks with equity portfolios containing equity exposures with values that are highly nonlinear in nature (for example, equity derivatives or convertibles) must employ an internal model designed to appropriately capture the risks associated with these instruments.

In addition, the number of risk factors and exposures in the sample and the data period used for quantification in the bank's models and benchmarking exercise must be sufficient to provide confidence in the accuracy and robustness of the bank's estimates. The bank's model and benchmarking exercise also must incorporate data that are relevant in representing the risk profile of the bank's modeled equity exposures, and must include data from at least one equity market cycle containing adverse market movements relevant to the risk profile of the bank's modeled equity exposures. In addition, for the reasons described below, the final rule adds that the bank's benchmarking exercise must be based on daily market prices for the benchmark portfolio. If the bank's model uses a scenario methodology, the bank must demonstrate that the model produces a conservative estimate of potential losses on the bank's modeled equity exposures over a relevant long-term market cycle. If the bank employs risk factor models, the bank must demonstrate through empirical analysis the appropriateness of the risk factors used.

Under the proposed rule, the agencies also required that daily market prices be available for all modeled equity exposures. The proposed requirement applied to either direct holdings or proxies. Several commenters objected to the requirement of daily market prices. A few asserted that proxies for private equity investments are more relevant than public market proxies and should be permitted even if they are only available on a monthly basis. The agencies agree with commenters on this issue. Accordingly, under the final rule, banks are not required to have daily market prices for all modeled equity exposures, either direct holdings or proxies. However, to ensure sufficient rigor in the modeling process, the final rule requires that a bank's benchmarking exercise be based on daily market prices for the benchmark portfolio, as noted above.

Finally, the bank must be able to demonstrate, using theoretical arguments and empirical evidence, that any proxies used in the modeling process are comparable to the bank's modeled equity exposures, and that the bank has made appropriate adjustments for differences. The bank must derive any proxies for its modeled equity exposures or benchmark portfolio using historical market data that are relevant to the bank's modeled equity exposures or benchmark portfolio (or, where not, must use appropriately adjusted data), and such proxies must be robust estimates of the risk of the bank's modeled equity exposures.

In evaluating whether a bank has met the criteria described above, the bank's primary Federal supervisor may consider, among other factors, (i) the nature of the bank's equity exposures, including the number and types of equity exposures (for example, publicly traded, non-publicly traded, long, short); (ii) the risk characteristics and makeup of the bank's equity exposures, including the extent to which publicly available price information is obtainable on the exposures; and (iii) the level and degree of concentration of, and correlations among, the bank's equity exposures.

The agencies do not intend to dictate the form or operational details of a bank's internal model for equity exposures. Accordingly, the agencies are not prescribing any particular type of model for determining risk-based capital requirements. Although the final rule requires a bank that uses the IMA to ensure that its internal model produces an estimate of potential losses for its modeled equity exposures that is no less than the estimate of potential losses produced by a VaR methodology employing a 99.0 percent one-tailed confidence interval of the distribution of quarterly returns for a benchmark portfolio of equity exposures, the rule does not require a bank to use a VaR-based model. The agencies recognize that the type and sophistication of internal models will vary across banks due to differences in the nature, scope, and complexity of business lines in general and equity exposures in particular. The agencies also recognize that some banks employ models for internal risk management and capital allocation purposes that can be more relevant to the bank's equity exposures than some VaR models. For example, some banks employ rigorous historical scenario analysis and other techniques for assessing the risk of their equity portfolios.

Banks that choose to use a VaR-based internal model under the IMA should use a historical observation period that includes a sufficient amount of data points to ensure statistically reliable and robust loss estimates relevant to the long-term risk profile of the bank's specific holdings. The data used to represent return distributions should reflect the longest sample period for which data are available and should meaningfully represent the risk profile of the bank's specific equity holdings. The data sample should be long-term in nature and, at a minimum, should encompass at least one complete equity market cycle containing adverse market movements relevant to the risk profile of the bank's modeled exposures. The data used should be sufficient to provide conservative, statistically reliable, and robust loss estimates that are not based purely on subjective or judgmental considerations.

The parameters and assumptions used in a VaR model should be subject to a rigorous and comprehensive regime of stress-testing. Banks utilizing VaR models should subject their internal model and estimation procedures, including volatility computations, to either hypothetical or historical scenarios that reflect worst-case losses given underlying positions in both publicly traded and non-publicly traded equities. At a minimum, banks that use a VaR model should employ stress tests to provide information about the effect of tail events beyond the level of confidence assumed in the IMA.

Banks using non-VaR internal models that are based on stress tests or scenario analyses should estimate losses under worst-case modeled scenarios. These scenarios should reflect the composition of the bank's equity portfolio and should produce risk-based capital requirements at least as large as those that would be required to be held against a representative market index or other relevant benchmark portfolio under a VaR approach. For example, for a portfolio consisting primarily of publicly held equity securities that are actively traded, risk-based capital requirements produced using historical scenario analyses should be greater than or equal to risk-based capital requirements produced by a baseline VaR approach for a major index or sub-index that is representative of the bank's holdings.

The loss estimate derived from the bank's internal model constitutes the risk-based capital requirement for the modeled equity exposures (subject to the supervisory floors described below). The equity capital requirement is incorporated into a bank's risk-based capital ratio through the calculation of risk-weighted equivalent assets. To convert the equity capital requirement into risk-weighted equivalent assets, a bank must multiply the capital requirement by 12.5.

Risk-Weighted Assets Under the IMA

Under the proposed and final rules, as noted above, a bank may apply the IMA only to its publicly traded equity exposures or may apply the IMA to its publicly traded and non-publicly traded equity exposures. In either case, a bank is not allowed to apply the IMA to equity exposures that receive a 0 or 20 percent risk weight under the SRWA, community development equity exposures, and equity exposures to investment funds (collectively, excluded equity exposures). Unlike the SRWA, the IMA does not provide for a 10 percent materiality threshold for non-significant equity exposures.

Several commenters objected to the fact that the IMA does not provide a 100 percent risk weight for non-significant equity exposures up to a 10 percent materiality threshold. These commenters maintained that the lack of a materiality threshold under the IMA will discourage use of this methodology relative to the SRWA. Commenters suggested that the agencies incorporate a materiality threshold into the IMA.

The agencies do not believe that it is necessary or appropriate to incorporate such a threshold under the IMA. The agencies are concerned that a bank could manipulate significantly its risk-based capital requirements based on the exposures it chooses to model and those which it would deem immaterial (and to which it would apply a 100 percent risk weight). The agencies also believe that a flat 100 percent risk weight is inconsistent with the risk sensitivity of the IMA.

Under the proposal, if a bank applied the IMA to both publicly traded and non-publicly traded equity exposures, the bank's aggregate risk-weighted asset amount for its equity exposures would be equal to the sum of the risk-weighted asset amount of excluded equity exposures (calculated outside of the IMA) and the risk-weighted asset amount of the non-excluded equity exposures (calculated under the IMA). The risk-weighted asset amount of the non-excluded equity exposures generally would be set equal to the estimate of potential losses on the bank's non-excluded equity exposures generated by the bank's internal model multiplied by 12.5. To ensure that a bank holds a minimum amount of risk-based capital against its modeled equity exposures, however, the proposed rule contained a supervisory floor on the risk-weighted asset amount of the non-excluded equity exposures. As a result of this floor, the risk-weighted asset amount of the non-excluded equity exposures could not fall below the sum of (i) 200 percent multiplied by the aggregate adjusted carrying value or ineffective portion of hedge pairs, as appropriate, of the bank's non-excluded publicly traded equity exposures; and (ii) 300 percent multiplied by the aggregate adjusted carrying value of the bank's non-excluded non-publicly traded equity exposures.

Also under the proposal, if a bank applied the IMA only to its publicly traded equity exposures, the bank's aggregate risk-weighted asset amount for its equity exposures would be equal to the sum of (i) the risk-weighted asset amount of excluded equity exposures (calculated outside of the IMA); (ii) 400 percent multiplied by the aggregate adjusted carrying value of the bank's non-excluded non-publicly traded equity exposures; and (iii) the aggregate risk-weighted asset amount of its non-excluded publicly traded equity exposures. The risk-weighted asset amount of the non-excluded publicly traded equity exposures would be equal to the estimate of potential losses on the bank's non-excluded publicly traded equity exposures generated by the bank's internal model multiplied by 12.5. Under the proposed rule, the risk-weighted asset amount for the non-excluded publicly traded equity exposures would be subject to a floor of 200 percent multiplied by the aggregate adjusted carrying value or ineffective portion of hedge pairs, as appropriate, of the bank's non-excluded publicly traded equity exposures.

Several commenters did not support the concept of floors in a risk-sensitive approach that requires a comparison to estimates of potential losses produced by a VaR methodology. If floors are required in the final rule, however, these commenters noted that the calculation at the aggregate level would not pose significant operational issues. A few commenters, in contrast, objected to the proposed aggregate floors, asserting that it would be operationally difficult to determine compliance with such floors.

The agencies believe that it is prudent to retain the floor requirements in the IMA and, thus, are adopting the floor requirements as described above. The agencies note that the New Accord also imposes a 200 percent and 300 percent floor for publicly traded and non-publicly traded equity exposures, respectively. Regarding the proposal to calculate the floors on an aggregate basis, the agencies believe it is appropriate to maintain this approach, given that for most banks it does not seem to pose significant operational issues.

4. Equity Exposures to Investment Funds

The proposed rule included a separate treatment for equity exposures to investment funds. As proposed, a bank would determine the risk-weighted asset amount for equity exposures to investment funds using one of three approaches: the full look-through approach, the simple modified look-through approach, or the alternative modified look-through approach, unless the equity exposure to an investment fund is a community development equity exposure. Such equity exposures would be subject to a 100 percent risk weight. If an equity exposure to an investment fund is part of a hedge pair, a bank could use the ineffective portion of the hedge pair as the adjusted carrying value for the equity exposure to the investment fund. The risk-weighted asset amount of the effective portion of the hedge pair is equal to its adjusted carrying value. A bank could choose to apply a different approach among the three alternatives to different equity exposures to investment funds.

The agencies proposed a separate treatment for equity exposures to an investment fund to prevent banks from arbitraging the proposed rule's risk-based capital requirements for certain high-risk exposures and to ensure that banks do not receive a punitive risk-based capital requirement for equity exposures to investment funds that hold only low-risk assets. Under the proposal, the agencies defined an investment fund as a company (i) all or substantially all of the assets of which are financial assets and (ii) that has no material liabilities.

Generally, commenters supported the separate treatment for equity exposures to investment funds. However, several commenters objected to the exclusion of investment funds with material liabilities from this separate treatment, observing that it would exclude equity exposures to hedge funds. Several commenters suggested that investment funds with material liabilities should be eligible for the look-through approaches. One commenter suggested that the agencies should adopt the following definition of investment fund: "A company in which all or substantially all of the assets are pooled financial assets that are collectively managed in order to generate a financial return, including investment companies or funds with material liabilities." A few commenters suggested that equity exposures to investment funds with material liabilities should be treated under the SRWA or IMA as non-publicly traded equity exposures rather than the separate treatment developed for equity exposures to investment funds.

The agencies do not agree with commenters that the look-through approaches for investment funds should apply to investment vehicles with material liabilities. The look-through treatment is designed to capture the risks of an indirect holding of the underlying assets of the investment fund. Investment vehicles with material liabilities provide a leveraged exposure to the underlying financial assets and have a risk profile that may not be appropriately captured by a look-through approach.

Under the proposal, each of the approaches to equity exposures to investment funds imposed a 7 percent minimum risk weight on such exposures. This proposed minimum risk weight was similar to the minimum 7 percent risk weight under the RBA for securitization exposures and the effective 56 basis point minimum risk-based capital requirement per dollar of securitization exposure under the SFA.

Several commenters objected to the proposed 7 percent risk weight floor. A few commenters suggested that the floor should be decreased or eliminated, particularly for low-risk investment funds that receive the highest rating from an NRSRO. Others recommended that the 7 percent risk weight floor should be applied on an aggregate basis rather than on a fund-by-fund basis.

The agencies proposed the 7 percent risk weight floor as a minimum risk-based capital requirement for exposures not directly held by a bank. However, the agencies believe the comments on this issue have merit and recognize that the floor would provide banks with an incentive to invest in higher-risk investment funds. Consistent with the New Accord, the final rule does not impose a 7 percent risk weight floor on equity exposures to investment funds, on either an individual or aggregate basis.

Full Look-Through Approach

A bank may use the full look-through approach only if the bank is able to compute a risk-weighted asset amount for each of the exposures held by the investment fund. Under the proposed rule, a bank would be required to calculate the risk-weighted asset amount for each of the exposures held by the investment fund as if the exposures were held directly by the bank. Depending on whether the exposures were wholesale, retail, securitization, or equity exposures, a bank would apply the appropriate IRB risk-based capital treatment.

Several commenters suggested that the agencies should allow a bank with supervisory approval to use the IMA to model the underlying assets of an investment fund by including the bank's pro rata share of the investment fund's assets in its equities model. The commenters believed there is no basis for preventing a bank from using the IMA, a sophisticated and risk-sensitive approach, when a bank has full position data for an investment fund.

The agencies agree with commenters' views in this regard. If a bank has full position data for an investment fund and has been approved by its primary Federal supervisor for use of the IMA, it may include the underlying equity exposures held by an investment fund, after adjustment for proportional ownership, in its equities model under the IMA. Therefore, in the final rule, under the full look-through approach, a bank must either (i) set the risk-weighted asset amount of the bank's equity exposure to the investment fund equal to product of (A) the aggregate risk-weighted asset amounts of the exposures held by the fund as if they were held directly by the bank and (B) the bank's proportional ownership share of the fund; or (ii) include the bank's proportional ownership share of each exposure held by the fund in the bank's IMA. If the bank chooses (ii), the risk-weighted asset amount for the equity exposure to the investment fund is determined together with the risk-weighted asset amount for the bank's other non-excluded equity exposures and is subject to the aggregate floors under this approach.

Simple Modified Look-Through Approach

Under the proposed simple modified look-through approach, a bank would set the risk-weighted asset amount for its equity exposure to an investment fund equal to the adjusted carrying value of the equity exposure multiplied by the highest risk weight in Table L that applies to any exposure the fund is permitted to hold under its prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. The bank could exclude derivative contracts that are used for hedging, not speculative purposes, and do not constitute a material portion of the fund's exposures.

Commenters generally supported the simple modified look-through approach as a low-burden yet moderately risk-sensitive way of treating equity exposures to an investment fund. However, several commenters objected to the large jump in risk weights (from a 400 percent to a 1,250 percent risk weight) between investment funds permitted to hold non-publicly traded equity exposures and investment funds permitted to hold OTC derivative contracts and/or exposures that must be deducted from regulatory capital or receive a risk weight greater than 400 percent under the IRB approach. In addition, one commenter objected to the proposed 20 percent risk weight for the most highly rated money market mutual funds that are subject to SEC rule 2a-7 governing portfolio maturity, quality, diversification and liquidity. This commenter asserted that a 7 percent risk weight for such exposures would be appropriate.

The agencies agree that the proposed risk-weighting for highly-rated money market mutual funds subject to SEC rule 2a-7 is conservative, given the generally low risk of such funds. Accordingly, the agencies added a new investment fund approach—the Money Market Fund Approach—which applies a 7 percent risk weight to a bank's equity exposure to a money market fund that is subject to SEC rule 2a-7 and that has an applicable external rating in the highest investment-grade rating category.

The agencies have made no changes to address commenters' concerns about a lack of intermediate risk weights between 400 percent and 1,250 percent. The agencies believe the range of risk weights is sufficiently granular to accommodate most equity exposures to investment funds.

TABLE L.—MODIFIED LOOK-THROUGH APPROACHES FOR EQUITY EXPOSURES TO INVESTMENT FUNDS

Risk weight	Exposure class or investment fund type
0 Percent	Sovereign exposures with a long-term external rating in the highest investment-grade rating category and sovereign exposures of the United States.
20 Percent	Exposures with a long-term external rating in the highest or second-highest investment-grade rating category; exposures with a short-term external rating in the highest investment-grade rating category; and exposures to, or guaranteed by, depository institutions, foreign banks (as defined in 12 CFR 211.2), or securities firms subject to consolidated supervision or regulation comparable to that imposed on U.S. securities broker-dealers that are repo-style transactions or bankers' acceptances.
50 Percent	Exposures with a long-term external rating in the third-highest investment-grade rating category or a short-term external rating in the second-highest investment-grade rating category.
100 Percent	Exposures with a long-term or short-term external rating in the lowest investment-grade rating category.
200 Percent	Exposures with a long-term external rating one rating category below investment grade.
300 Percent	Publicly traded equity exposures.
400 Percent	Non-publicly traded equity exposures; exposures with a long-term external rating two or more rating categories below investment grade; and unrated exposures (excluding publicly traded equity exposures).
1,250 Percent	OTC derivative contracts and exposures that must be deducted from regulatory capital or receive a risk weight greater than 400 percent under this appendix.

Alternative Modified Look-Through Approach

Under this approach, a bank may assign the adjusted carrying value of an equity exposure to an investment fund on a pro rata basis to different risk-weight categories in Table L based on the investment limits in the fund's prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. If the sum of the investment limits for all exposure classes within the fund exceeds 100 percent, the bank must assume that the fund invests to the maximum extent permitted under its investment limits in the exposure class with the highest risk weight under Table L, and continues to make investments in the order of the exposure class with the next highest risk-weight under Table L until the maximum total investment level is reached. If more than one exposure class applies to an exposure, the bank must use the highest applicable risk weight. A bank may exclude derivative contracts held by the fund that are used for hedging, not speculative, purposes and do not constitute a material portion of the fund's exposures. Other than comments addressing the risk weight table and the 7 percent floor (addressed above), the agencies did not receive significant comment on this approach and have adopted it without significant change.

VI. Operational Risk

This section describes features of the AMA framework for determining the risk-based capital requirement for operational risk. A bank meeting the AMA qualifying criteria uses its internal operational risk quantification system to calculate its risk-based capital requirement for operational risk.

Currently, the agencies' general risk-based capital rules do not include an explicit capital charge for operational risk. Rather, the existing risk-based capital rules were designed to broadly cover all risks, and therefore implicitly cover operational risk. With the adoption of the more risk-sensitive treatment under the IRB approach for credit risk in this final rule, there no longer is an implicit capital buffer for other risks.

The agencies recognize that operational risk is a key risk in banks, and evidence indicates that a number of factors are driving increases in operational risk. These factors include greater use of automated technology, proliferation of new and highly complex products, growth of e-banking transactions and related business applications, large-scale acquisitions, mergers, and consolidations, and greater use of outsourcing arrangements. Furthermore, the experience of a number of high-profile, high-severity operational losses across the banking industry, including those resulting from legal settlements, highlight operational risk as a major source of unexpected losses. Because the implicit regulatory capital buffer for operational risk is removed under the final rule, the agencies are requiring banks using the IRB approach for credit risk to use the AMA to address operational risk when computing their risk-based capital requirement.

As discussed previously, operational risk exposure is the 99.9th percentile of the distribution of potential aggregate operational losses as generated by the bank's operational risk quantification system over a one-year horizon. EOL is the expected value of the same distribution of potential aggregate operational losses. Under the proposal, a bank's risk-based capital requirement for operational risk would be the sum of EOL and UOL. A bank would be allowed to recognize (i) certain offsets for EOL (such as certain reserves and other internal business practices), and (ii) the effect of risk mitigants such as insurance in calculating its regulatory capital requirement for operational risk.

Under the proposed rule, the agencies recognized that a bank's risk-based capital requirement for operational risk could be based on UOL alone if the bank could demonstrate it has offset EOL with eligible operational risk offsets. Eligible operational risk offsets were defined as amounts, not to exceed EOL, that (i) are generated by internal business practices to absorb highly predictable and reasonably stable operational losses, including reserves calculated in a manner consistent with GAAP; and (ii) are available to cover EOL with a high degree of certainty over a one-year horizon. Eligible operational risk offsets could only be used to offset EOL, not UOL.

The preamble to the proposed rule stated that in determining whether to accept a proposed EOL offset, the agencies would consider whether the proposed offset would be available to cover EOL with a high degree of certainty over a one-year horizon. Supervisory recognition of EOL offsets would be limited to those business lines and event types with highly predictable, routine losses. The preamble noted that based on discussions with the industry and supervisory experience, highly predictable and routine losses appear to be limited to those relating to securities processing and to credit card fraud.

The majority of commenters on this issue recommended that the agencies should allow banks to present evidence of additional areas with highly predictable and reasonably stable losses for which eligible operational risk offsets could be considered. These commenters identified fraud losses pertaining to debit or ATM cards, commercial or business credit cards, HELOCs, and external checks in retail banking as additional events that have highly predictable and reasonably stable losses. Commenters also identified legal reserves set aside for small, predictable legal loss events, budgeted funds, and forecasted funds as other items that should be considered eligible operational risk offsets. Several commenters also highlighted that the proposed rule was inconsistent with the New Accord regarding the ability of budgeted funds to serve as EOL offsets. One commenter proposed eliminating EOL altogether because the commenter already factors it into its pricing practices.

The New Accord permits a supervisor to accept expected loss offsets provided a bank is ''able to demonstrate to the satisfaction of its national supervisor that it has measured and accounted for its EL exposure.'' [103] To the extent a bank is permitted to adjust its estimate of operational risk exposure to reflect potential operational risk offsets, it is appropriate to consider the degree to which such offsets meet U.S. accounting standards and can be viewed as regulatory capital substitutes. The final rule retains the proposed definition described above. The agencies believe that this definition allows for the supervisory consideration of EOL offsets in a flexible and prudent manner.

In determining its operational risk exposure, the bank may also take into account the effects of qualifying operational risk mitigants such as insurance. To recognize the effects of qualifying operational risk mitigants such as insurance for risk-based capital purposes, the bank must estimate its operational risk exposure with and without such effects. The reduction in a bank's risk-based capital requirement for operational risk due to qualifying operational risk mitigants may not exceed 20 percent of the bank's risk-based capital requirement for operational risk, after approved adjustments for EOL offsets.

A risk mitigant must be able to absorb losses with sufficient certainty to warrant inclusion as a qualifying operational risk mitigant. For insurance to meet this standard, it must:

(i) be provided by an unaffiliated company that has a claims paying ability that is rated in one of the three highest rating categories by an NRSRO;

(ii) have an initial term of at least one year and a residual term of more than 90 days;

(iii) have a minimum notice period for cancellation of 90 days;

(iv) have no exclusions or limitations based upon regulatory action or for the receiver or liquidator of a failed bank; and

(v) be explicitly mapped to an actual operational risk exposure of the bank.

A bank must receive prior written approval from its primary Federal supervisor to recognize an operational risk mitigant other than insurance as a qualifying operational risk mitigant. In evaluating an operational risk mitigant other than insurance, a primary Federal supervisor will consider whether the operational risk mitigant covers potential operational losses in a manner equivalent to holding regulatory capital.

The bank's methodology for incorporating the effects of insurance must capture, through appropriate discounts in the amount of risk mitigation, the residual term of the policy, where less than one year; the policy's cancellation terms, where less than one year; the policy's timeliness of payment; and the uncertainty of payment as well as mismatches in coverage between the policy and the hedged operational loss event. The bank may not recognize for regulatory capital purposes insurance with a residual term of 90 days or less.

Several commenters criticized the proposal for limiting recognition of non-insurance operational risk mitigants to those mitigants that would cover potential operational losses in a manner equivalent to holding regulatory capital. The commenters noted that similar limitations are not included in the New Accord. Other commenters asserted that qualifying operational risk mitigants should be broader than insurance.

The New Accord discusses the use of insurance explicitly as an operational risk mitigant and notes that the BCBS ''in due course, may consider revising the criteria for and limits on the recognition of operational risk mitigants

[103] 103 New Accord, ¶669(b).

on the basis of growing experience.'' [104] Similarly, under the proposed rule, the agencies provided flexibility that recognizes the potential for developing operational risk mitigants other than insurance over time. The agencies continue to believe it is appropriate to consider the degree to which such mitigants can be viewed as regulatory capital substitutes. Therefore, under the final rule, in evaluating such mitigants, the agencies will consider whether the operational risk mitigant covers potential operational losses in a manner equivalent to holding regulatory capital.

Under the final rule, as under the proposal, if a bank does not qualify to use or does not have qualifying operational risk mitigants, the bank's dollar risk-based capital requirement for operational risk is its operational risk exposure minus eligible operational risk offsets (if any). If a bank qualifies to use operational risk mitigants and has qualifying operational risk mitigants, the bank's dollar risk-based capital requirement for operational risk is the greater of: (i) The bank's operational risk exposure adjusted for qualifying operational risk mitigants minus eligible operational risk offsets (if any); and (ii) 0.8 multiplied by the difference between the bank's operational risk exposure and its eligible operational risk offsets (if any). The dollar risk-based capital requirement for operational risk is multiplied by 12.5 to convert it into an equivalent risk-weighted asset amount. The resulting amount is added to the comparable amount for credit risk in calculating the institution's risk-based capital denominator.

VII. Disclosure

1. Overview

The agencies have long supported meaningful public disclosure by banks with the objective of improving market discipline. The agencies recognize the importance of market discipline in encouraging sound risk management practices and fostering financial stability.

Pillar 3 of the New Accord, market discipline, complements the minimum capital requirements and the supervisory review process by encouraging market discipline through enhanced and meaningful public disclosure. The public disclosure requirements in the final rule are intended to allow market participants to assess key information about a bank's risk profile and its associated level of capital.

The agencies view public disclosure as an important complement to the advanced approaches to calculating minimum regulatory risk-based capital requirements, which will be heavily based on internal systems and methodologies. With enhanced transparency regarding banks' experiences with the advanced approaches, investors can better evaluate a bank's capital structure, risk exposures, and capital adequacy. With sufficient and relevant information, market participants can better evaluate a bank's risk management performance, earnings potential and financial strength.

Improvements in public disclosures come not only from regulatory standards, but also through efforts by bank management to improve communications to public shareholders and other market participants. In this regard, improvements to risk management processes and internal reporting systems provide opportunities to significantly improve public disclosures over time. Accordingly, the agencies strongly encourage the management of each bank to regularly review its public disclosures and enhance these disclosures, where appropriate, to clearly identify all significant risk exposures—whether on- or off-balance sheet—and their effects on the bank's financial condition and performance, cash flow, and earnings potential.

Comments on the Proposed Rule

Many commenters expressed concern that the proposed disclosures were excessive, burdensome and overly prescriptive and would hinder—rather than facilitate—market discipline by requiring banks to disclose items that would not be well understood or provide useful information to market participants. In particular, commenters were concerned that the differences between the proposed rule and the New Accord (such as the proposed ELGD risk parameter and proposed wholesale definition of default) would not be meaningful for cross-border comparative purposes, and would increase compliance burden for banks subject to the agencies' risk-based capital rules. Some commenters also believed that the information provided in the disclosures would not be comparable across banks because each bank would use distinct internal methodologies to generate the disclosures. Several commenters suggested that the agencies should delay the disclosure requirements until U.S. implementation of the IRB approach has gained some maturity. This would allow the agencies and banking industry sufficient time to ensure usefulness of the public disclosure requirements and comparability across banks.

The agencies believe that it is important to retain the vast majority of the proposed disclosures, which are consistent with the New Accord. These disclosures will enable market participants to gain key insights regarding a bank's capital structure, risk exposures, risk assessment processes, and ultimately, the capital adequacy of the institution. The agencies also note that many of the disclosure requirements are already required by, or are consistent with, existing GAAP, SEC disclosure requirements, or regulatory reporting requirements for banks. More generally, the agencies view the public disclosure requirements as an integral part of the advanced approaches and the New Accord and are continuing to require their implementation beginning with a bank's first transitional floor period.

The agencies are sympathetic, however, to commenters' concerns about cross-border comparability. The agencies believe that many of the changes they have made to the final rule (such as eliminating the ELGD risk parameter and adopting the New Accord's definition of default for wholesale exposures, as discussed above) will address commenters' concerns regarding comparability. In addition, the agencies have made several changes to the disclosure requirements to make them more consistent with the New Accord. These changes should increase cross-border comparability and reduce implementation and compliance burden. These changes are discussed in the relevant sections below.

2. General Requirements

Under the proposed rule, the public disclosure requirements would apply to the top-tier legal entity that is a core or opt-in bank within a consolidated banking group—the top-tier U.S. BHC or DI that is a core or opt-in bank.

Several commenters objected to this proposal, noting that it is inconsistent with the New Accord, which requires such disclosures at the global top consolidated level of a banking group to which the framework applies. Commenters asserted that public disclosure at the U.S. BHC or DI level for U.S. banking organizations owned by a foreign banking organization is not meaningful and could generate confusion or misunderstanding in the market.

The agencies agree that commenters' concerns have merit and believe that it is important to be consistent with the

[104] New Accord, footnote 110.

New Accord. Accordingly, under the final rule, the public disclosure requirements will generally be required only at the top-tier global consolidated level. Under exceptional circumstances, a primary Federal supervisor may require some or all of the public disclosures at the top-tier U.S. level if the primary Federal supervisor determines that such disclosures are important for market participants to form appropriate insights regarding the bank's risk profile and associated level of capital. A factor the agencies will consider, for example, is whether a U.S. subsidiary of a foreign banking organization has debt or equity registered and actively traded in the United States.

In addition, the proposed rule stated that, in general, a DI that is a subsidiary of a BHC or another DI would not be subject to the disclosure requirements except that every DI would be required to disclose total and tier 1 capital ratios and their components, similar to current requirements. Nonetheless, these entities must file applicable bank regulatory reports and thrift financial reports. In addition, as described below in the regulatory reporting section, the agencies will require certain additional regulatory reporting from banks applying the advanced approaches, and a limited amount of the reported information will be publicly disclosed. If a DI that is a core or opt-in bank and is not a subsidiary of a BHC or another DI that must make the full set of disclosures, the DI would be required to make the full set disclosures.

One commenter objected to the supervisory flexibility provided to require additional disclosures at the subsidiary level. The commenter maintained that in all cases DIs that are a subsidiary of a BHC or another DI should not be subject to the disclosure requirements beyond disclosing their total and tier 1 capital ratios and the ratio components, as proposed. The commenter suggested that the agencies clarify this issue in the final rule.

The agencies do not believe, however, that these changes are appropriate. The agencies believe that it is important to preserve some flexibility in the event that the primary Federal supervisor believes that disclosures from such a DI are important for market participants to form appropriate insights regarding the bank's risk profile and associated level of capital.

The risks to which a bank is exposed, and the techniques that it uses to identify, measure, monitor, and control those risks are important factors that market participants consider in their assessment of the bank. Accordingly, under the proposed and final rules, each bank that is subject to the disclosure requirements must have a formal disclosure policy approved by its board of directors that addresses the bank's approach for determining the disclosures it should make. The policy should address the associated internal controls and disclosure controls and procedures. The board of directors and senior management must ensure that appropriate review of the disclosures takes place and that effective internal controls and disclosure controls and procedures are maintained.

A bank should decide which disclosures are relevant for it based on the materiality concept. Information would be regarded as material if its omission or misstatement could change or influence the assessment or decision of a user relying on that information for the purpose of making investment decisions.

To the extent applicable, a bank may fulfill its disclosure requirements under this final rule by relying on disclosures made in accordance with accounting standards or SEC mandates that are very similar to the disclosure requirements in this final rule. In these situations, a bank must explain material differences between the accounting or other disclosure and the disclosures required under this final rule.

Frequency/Timeliness

Under the proposed rule, the agencies required that quantitative disclosures be made quarterly. Several commenters objected to this requirement. These commenters asserted that banks subject to the U.S. public disclosure requirements would be placed at a competitive disadvantage because the New Accord requires banks to make Pillar 3 public disclosures on a semiannual basis.

The agencies believe that quarterly public disclosure requirements are important to ensure that the market has access to timely and relevant information and therefore have decided to retain quarterly quantitative disclosure requirements in the final rule. This disclosure frequency is consistent with longstanding requirements in the United States for robust quarterly disclosures in financial and regulatory reports, and is appropriate considering the potential for rapid changes in risk profiles. Moreover, many of the existing SEC, regulatory reporting, and other disclosure requirements that a bank may use to help meet its public disclosure requirements in the final rule are already required on a quarterly basis.

The proposal stated that the disclosures must be timely and that the agencies would consider a disclosure to be timely if it was made no later than the reporting deadlines for regulatory reports (for example, FR Y–9C) and financial reports (for example, SEC Forms 10–Q and 10–K). When these deadlines differ, the later deadline should be used.

Several commenters expressed concern that the tight timeframe for public disclosure requirements would be a burden and requested that the agencies provide greater flexibility, such as by setting the deadline for public disclosures at 60 days after quarter-end.

The agencies believe commenters' concerns must be balanced against the importance of allowing market participants to have access to timely information that is reflective of a bank's risk profile and associated capital levels. Accordingly, the agencies have decided to interpret the requirement for timely public disclosures for purposes of this final rule to mean within 45 days after calendar quarter-end.

In some cases, management may determine that a significant change has occurred, such that the most recent reported amounts do not reflect the bank's capital adequacy and risk profile. In those cases, banks should disclose the general nature of these changes and briefly describe how they are likely to affect public disclosures going forward. These interim disclosures should be made as soon as practicable after the determination that a significant change has occurred.

Location of Disclosures and Audit/Attestation Requirements

Under the proposed and final rules, the disclosures must be publicly available (for example, included on a public Web site) for each of the latest three years (12 quarters) or such shorter time period since the bank entered its first transitional floor period. Except as discussed below, management has discretion to determine the appropriate medium and location of the disclosures required by this final rule. Furthermore, banks have flexibility in formatting their public disclosures. The agencies are not specifying a fixed format for these disclosures.

The agencies encourage management to provide all of the required disclosures in one place on the entity's public Web site. The public Web site addresses are reported in the regulatory reports (for example, the FR Y–9C).[105]

[105] Alternatively, banks may provide the disclosures in more than one place, as some of them

Continued

Disclosure of tier 1 and total capital ratios must be provided in the footnotes to the year-end audited financial statements.[106] Accordingly, these disclosures must be tested by external auditors as part of the financial statement audit. Disclosures that are not included in the footnotes to the audited financial statements are not subject to external audit reports for financial statements or internal control reports from management and the external auditor.

The preamble to the proposed rule stated that due to the importance of reliable disclosures, the agencies would require the chief financial officer to certify that the disclosures required by the proposed rule were appropriate and that the board of directors and senior management were responsible for establishing and maintaining an effective internal control structure over financial reporting, including the information required by the proposed rule.

Several commenters expressed uncertainty regarding the proposed certification requirement for the chief financial officer. One commenter asked the agencies to articulate the standard of acceptance required for the certification of disclosure standards compared with what is required for financial reporting purposes. Another commenter questioned whether the chief financial officer would have sufficient familiarity with the risk management disclosures to make such a certification.

To address commenter uncertainty, the agencies have simplified and clarified the final rule's accountability requirements. Specifically, the final rule modifies the certification requirement and instead requires one or more senior officers of the bank to attest that the disclosures meet the requirements of the final rule. The senior officer may be the chief financial officer, the chief risk officer, an equivalent senior officer, or a combination thereof.

Proprietary and Confidential Information

The agencies stated in the preamble to the proposed rule that they believed the proposed requirements strike an appropriate balance between the need for meaningful disclosure and the protection of proprietary and confidential information.[107] Many commenters, however, expressed concern that the required disclosures would result in the release of proprietary information. Commenters expressed particular concerns about the granularity of the credit loss history and securitization disclosures, as well as disclosures for portfolios subject to the IRB risk-based capital formulas.

As noted above, the final rule provides banks with considerable discretion with regard to public disclosure requirements. Bank management determines which disclosures are relevant based on a materiality concept. In addition, bank management has flexibility regarding formatting and the level of granularity of disclosures, provided they meet certain minimum requirements. Accordingly, the agencies believe that banks generally can provide these disclosures without revealing proprietary and confidential information. Only in rare circumstances might disclosure of certain items of information required in the final rule compel a bank to reveal confidential and proprietary information. In these unusual situations, the final rule requires that if a bank believes that disclosure of specific commercial or financial information would prejudice seriously the position of the bank by making public information that is either proprietary or confidential in nature, the bank need not disclose those specific items, but must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed. This provision of the final rule applies only to those disclosures required by the final rule and does not apply to disclosure requirements imposed by accounting standards or other regulatory agencies.

3. Summary of Specific Public Disclosure Requirements

As in the proposed rule, the public disclosure requirements are comprised of 11 tables that provide important information to market participants on the scope of application, capital, risk exposures, risk assessment processes, and, hence, the capital adequacy of the institution. The agencies are adopting the tables as proposed, with the exceptions noted below. Again, the agencies note that the substantive content of the tables is the focus of the disclosure requirements, not the tables themselves. The table numbers below refer to the table numbers in the final rule.

Table 11.1 disclosures (Scope of Application) include a description of the level in the organization to which the disclosures apply and an outline of any differences in consolidation for accounting and regulatory capital purposes, as well as a description of any restrictions on the transfer of funds and capital within the organization. These disclosures provide the basic context underlying regulatory capital calculations.

One commenter questioned item (e) in Table 11.1, which would require the disclosure of the aggregate amount of capital deficiencies in all subsidiaries and the name(s) of such subsidiaries. The commenter asserted that the scope of this item should be limited to those legal subsidiaries that are subject to banking, securities, or insurance regulators' capital adequacy rules and should not include unregulated entities that are consolidated into the top corporate entity or unconsolidated affiliate and joint ventures.

As stated in a footnote to Table 11.1 in the proposed rule, the agencies limited the proposed requirement to legal subsidiaries that are subject to banking, securities, or insurance regulators' capital adequacy rules. The agencies are further clarifying this disclosure in Table 11.1.

Table 11.2 disclosures (Capital Structure) provide information on various components of regulatory capital available to absorb losses and allow for an evaluation of the quality of the capital available to absorb losses within the bank.

Table 11.3 disclosures (Capital Adequacy) provide information about how a bank assesses the adequacy of its capital and require that the bank disclose its minimum capital requirements for significant risk areas and portfolios. The table also requires disclosure of the regulatory capital ratios of the consolidated group and each DI subsidiary. Such disclosures provide insight into the overall adequacy of capital based on the risk profile of the organization.

Tables 11.4, 11.5, and 11.7 disclosures (Credit Risk) provide market participants with insight into different types and concentrations of credit risk to which the bank is exposed and the

may be included in public financial reports (for example, in Management's Discussion and Analysis included in SEC filings) or other regulatory reports (for example, FR Y–9C Reports). Banks must provide a summary table on their public Web site that specifically indicates where all the disclosures may be found (for example, regulatory report schedules or page numbers in annual reports).

[106] These ratios are required to be disclosed in the footnotes to the audited financial statements pursuant to existing GAAP requirements in Chapter 17 of the ''AICPA Audit and Accounting Guide for Depository and Lending Institutions: Banks, Savings institutions, Credit unions, Finance companies and Mortgage companies.''

[107] Proprietary information encompasses information that, if shared with competitors, would render a bank's investment in these products/systems less valuable, and, hence, could undermine its competitive position. Information about customers is often confidential, in that it is provided under the terms of a legal agreement or counterparty relationship.

techniques the bank uses to measure, monitor, and mitigate those risks. These disclosures are intended to enable market participants to assess the credit risk exposures under the IRB approach, without revealing proprietary information.

Several commenters made suggestions related to Table 11.4. One commenter addressed item (b), which requires the disclosure of total and average gross credit risk exposures over the period broken down by major types of credit exposure. The commenter asked the agencies to clarify that methods used for financial reporting purposes are allowed for determining averages. Another commenter requested that the agencies clarify what is meant by ''gross'' in item (b), given that a related footnote describes net credit risk exposures in accordance with GAAP.

As with most of the disclosure requirements, the agencies are not prescriptive regarding the methodologies a bank must use for determining averages. Rather, the bank must choose whatever methodology it believes to be most reflective of its risk position. That methodology may be the one the bank uses for financial reporting purposes. The agencies have deleted ''gross'' and otherwise simplified the wording of item (b) in Table 11.4 to enhance clarity. Item (b) now reads ''total credit risk exposures and average credit risk exposures, after accounting offsets in accordance with GAAP, and without taking into account the effects of credit risk mitigation techniques (for example collateral and netting not included in GAAP for disclosure), over the period broken down by major types of credit exposure.''

In addition, a commenter noted that the requirements in Table 11.4 regarding the breakdown of disclosures by ''major types of credit exposure'' in items (b) through (e) and by ''counterparty type'' for items (d) and (f) are unclear. Moreover, with respect to items (d), (e), and (f), the commenter recommended that disclosures should be provided on an annual rather than quarterly basis. The same commenter also asserted that the disclosure of remaining contractual maturity breakdown in item (e) should be required annually. Finally, regarding items (f) and (g), a few commenters wanted clarification of the definition of impaired and past due loans.

The agencies are not prescriptive with regard to what is meant by ''major types of credit exposure,'' disclosure by counterparty type, or impaired and past due loans. Bank management has the discretion to determine the most appropriate disclosure for the bank's risk profile consistent with internal practice, GAAP or regulatory reports (such as the FR Y–9C). As noted in the proposal, for major types of credit exposure a bank could apply a breakdown similar to that used for accounting purposes, such as (a) loans, off-balance sheet commitments, and other non-derivative off-balance sheet exposures, (b) debt securities, and (c) OTC derivatives. The agencies do not believe it is appropriate to make an exception to the general quarterly requirement for quantitative disclosures for the disclosure in Table 11.4.

Commenters provided extensive feedback on several aspects of Table 11.5 (Disclosures for Portfolios Subject to IRB Risk-Based Capital Formulas). Several commenters were concerned that the required level of detail may compel banks to disclose proprietary information. With respect to item (c), a couple of commenters noted that the proposal differs from the New Accord in requiring exposure-weighted average capital requirements instead of risk weight percentages for groups of wholesale and retail exposures. One commenter also suggested that the term ''actual losses'' required in item (d) needs to be defined. Finally, several commenters objected to the proposal in item (e) to disclose backtesting results, asserting that such results would not be understood by the market. Commenters suggested that disclosure of this item be delayed beyond the proposed commencement date of year-end 2010, to commence instead ten years after a bank exits from the parallel run period.

As discussed above, the agencies believe that, in most cases, a bank can make the required disclosures without revealing proprietary information and that the rule contains appropriate provisions to deal with specific bank concerns. With regard to item (c), the agencies agree that there is no strong policy reason to differ from the New Accord and have changed item (c) to require the specified disclosures in risk weight percentages rather than weighted-average capital requirements. With respect to item (d), the agencies are not imposing a prescriptive definition of actual losses and believe that banks should determine actual losses consistent with internal practice. Finally, regarding item (e), the agencies believe that public disclosure of backtesting results provides important information to the market and should not be delayed. However, the agencies have slightly modified the requirement, consistent with the New Accord, to reinforce that disclosure of individual risk parameter backtesting is not always required.

Commenters provided feedback on a few aspects of Table 11.7 (Credit Risk Mitigation). One commenter asserted that the table appears to overlap with the information on credit risk mitigation required in Table 11.5, item (a) and requested that the agencies consolidate and simplify the requirements. In addition, several commenters objected to Table 11.7 item (b), which would require public disclosure of the risk-weighted asset amount associated with credit risk exposures that are covered by credit risk mitigation in the form of guarantees and credit derivatives. The commenter noted that this requirement is not contained in the New Accord, which only requires the total exposure amount of such credit risk exposures.

The agencies recognize that there is some duplication between Tables 11.7 and 11.5. At the same time, both requirements are part of the New Accord. The agencies have decided to address this issue by inserting in Table 11.5, item (a), a note that the disclosures can be met by completing the disclosures in Table 11.7. With regard to Table 11.7, item (b), the agencies have decided that there is no strong policy reason for requiring banks to disclose risk-weighted assets associated with credit risk exposures that are covered by credit risk mitigation in the form of guarantees and credit derivatives. The agencies have removed this requirement from the final rule, consistent with the New Accord.

Table 11.6 (General Disclosure for Counterparty Credit Risk of OTC Derivative Contracts, Repo-Style Transaction, and Eligible Margin Loans) provides the disclosure requirements related to credit exposures from derivatives. See the July 2005 BCBS publication entitled ''The Application of Basel II to Trading Activities and the Treatment of Double Default Effects.''

Commenters raised a few issues with respect to Table 11.6. One commenter requested that the agencies clarify item (a), which requires a discussion of the impact of the amount of collateral the bank would have to provide given a credit rating downgrade. The commenter asked whether this disclosure refers to credit downgrade of the bank, the counterparty, or some other entity. Another commenter objected to item (b), which would require the breakdown of counterparty credit exposure by type of exposure. The commenter asserted that this proposed requirement is burdensome, infeasible for netted exposures and duplicative of other information generally available in existing GAAP and U.S. bank regulatory financial statements.

The agencies have decided to clarify that item (a) refers in part to the credit rating downgrade of the bank making the disclosure. This is consistent with the intent of this disclosure requirement in the New Accord. With respect to item (b), the agencies recognize that this proposed requirement may be problematic for banks that have implemented the internal models methodology. Accordingly, the agencies have decided to modify the rule to note that this disclosure item is only required for banks not using the internal models methodology in section 32(d).

Table 11.8 disclosures (Securitization) provide information to market participants on the amount of credit risk transferred and retained by the organization through securitization transactions and the types of products securitized by the organization. These disclosures provide users a better understanding of how securitization transactions impact the credit risk of the bank.

One commenter asked the agencies to explicitly acknowledge that they will accept the definitions and interpretations of the components of securitization exposures that a bank uses for financial reporting purposes (FAS 140 reporting disclosures).

Generally, as noted above, the agencies expect that a bank will be able to fulfill some of its disclosure requirements by relying on disclosures made in accordance with accounting standards, SEC mandates, or regulatory reports. In these situations, a bank must explain any material differences between the accounting or other disclosure and the disclosures required under the final rule. The agencies do not believe any changes to the rule are necessary to accommodate the commenter's concern.

Table 11.9 disclosures (Operational Risk) provide insight into the bank's application of the AMA for operational risk and what internal and external factors are considered in determining the amount of capital allocated to operational risk.

Table 11.10 disclosures (Equities Not Subject to Market Risk Rule) provide market participants with an understanding of the types of equity securities held by the bank and how they are valued. The table also provides information on the capital allocated to different equity products and the amount of unrealized gains and losses.

Table 11.11 disclosures (Interest Rate Risk in Non-Trading Activities) provide information about the potential risk of loss that may result from changes in interest rates and how the bank measures such risk.

4. Regulatory Reporting

In addition to the public disclosures required by the consolidated banking organization subject to the advanced approaches, the agencies will require certain additional regulatory reporting from BHCs, their subsidiary DIs, and DIs applying the advanced approaches that are not subsidiaries of BHCs. The agencies believe that the reporting of key risk parameter estimates by each DI applying the advanced approaches will provide the primary Federal supervisor and other relevant supervisors with data important for assessing the reasonableness and accuracy of the bank's calculation of its minimum capital requirements under this final rule and the adequacy of the institution's capital in relation to its risks. This information will be collected through regulatory reports. The agencies believe that requiring certain common reporting across banks will facilitate comparable application of the final rule.

The agencies will publish in the **Federal Register** reporting schedules based on the reporting templates issued for comment in September 2006. Consistent with the proposed reporting schedules, these reporting schedules will include a summary schedule with aggregate data that will be available to the general public. It also will include supporting schedules that will be viewed as confidential supervisory information. These schedules will be broken out by exposure category and will collect risk parameter and other pertinent data in a systematic manner. Under the final rule, banks must begin reporting this information during their parallel run on a confidential basis. The agencies will share this information with each other for calibration and other analytical purposes.

One commenter expressed concerns that some of the confidential information requested in the proposed reporting templates was also contained in the public disclosure requirements under the proposal. As a result, some information would be classified as confidential in the reporting templates and public under the disclosure requirements in the final rule.

The agencies recognize that there may be some overlap between confidential information required in the regulatory reports and public information required in the disclosure requirements of the final rule. The agencies will address specific comments on the reporting templates separately. In general, the agencies believe that given the different purposes of the regulatory reporting and public disclosure requirements under the final rule, there may be some instances where the same or similar disclosures may be required by both sets of requirements. Many of the public disclosures cover only a subset of the information sought in the proposed regulatory reporting templates. For instance, banks are required only to disclose publicly information ''across a sufficient number of PD grades to allow a meaningful differentiation of credit risk,'' whereas the proposed reporting templates contemplate a much more granular collection of data by specified PD bands. Such aggregation of data so as to mask the confidential nature of more granular information that is reported to regulators is not unique to the advanced approaches reporting. In addition, the agencies believe that a bank may be able to comply with some of the public disclosure requirements under this final rule by publicly disclosing, at the bank's discretion and judgment, certain information found in the reporting templates that otherwise would be held confidential by the agencies. A bank could disclose this information on its Web site (as described in ''location and audit requirements'' above) if it believes that such disclosures will meet the public disclosure requirements required by the rule.

List of Acronyms

ABCP Asset-Backed Commercial Paper
ALLL Allowance for Loan and Lease Losses
AMA Advanced Measurement Approaches
ANPR Advance Notice of Proposed Rulemaking
AVC Asset Value Correlation
BCBS Basel Committee on Banking Supervision
BHC Bank Holding Company
CCDS Contingent Credit Default Swap
CF Conversion Factor
CEIO Credit-Enhancing Interest-Only Strip
CRM Credit Risk Mitigation
CUSIP Committee on Uniform Securities Identification Procedures
DI Depository Institution
DvP Delivery versus Payment
E Measure of Effectiveness
EAD Exposure at Default
ECL Expected Credit Loss
EE Expected Exposure
EL Expected Loss
ELGD Expected Loss Given Default
EOL Expected Operational Loss
EPE Expected Positive Exposure
EWALGD Exposure-Weighted Average Loss Given Default
FAS Financial Accounting Standard
FDIC Federal Deposit Insurance Corporation
FFIEC Federal Financial Institutions Examination Council
GAAP Generally Accepted Accounting Principles
GAO Government Accountability Office
HELOC Home Equity Line of Credit
HOLA Home Owners' Loan Act

HVCRE High-Volatility Commercial Real Estate
IAA Internal Assessment Approach
ICAAP Internal Capital Adequacy Assessment Process
IMA Internal Models Approach
IRB Internal Ratings-Based
K_{IRB} Capital Requirement for Underlying Pool of Exposures (securitizations)
LGD Loss Given Default
LTV Loan-to-Value Ratio
M Effective Maturity
NRSRO Nationally Recognized Statistical Rating Organization
OCC Office of the Comptroller of the Currency
OTC Over-the-Counter
OTS Office of Thrift Supervision
PCA Prompt Corrective Action
PD Probability of Default
PFE Potential Future Exposure
PMI Private Mortgage Insurance
PvP Payment versus Payment
QIS–3 Quantitative Impact Study 3
QIS–4 Quantitative Impact Study 4
QIS–5 Quantitative Impact Study 5
QRE Qualifying Revolving Exposure
RBA Ratings-Based Approach
RVC Ratio of Value Change
SEC Securities and Exchange Commission
SFA Supervisory Formula Approach
SME Small- and Medium-Size Enterprise
SPE Special Purpose Entity
SRWA Simple Risk-Weight Approach
TFR Thrift Financial Report
UL Unexpected Loss
UOL Unexpected Operational Loss
VaR Value-at-Risk

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b) of the RFA (5 U.S.C. 605(b)), the agencies certify that this final rule will not have a significant economic impact on a substantial number of small entities. Pursuant to regulations issued by the Small Business Administration (13 CFR 121.201), a ''small entity'' includes a bank holding company, commercial bank, or savings association with assets of $165 million or less (collectively, small banking organizations). The final rule requires a bank holding company, national bank, state member bank, state nonmember bank, or savings association to calculate its risk-based capital requirements according to certain internal-ratings-based and internal model approaches if the bank holding company, bank, or savings association (i) has consolidated total assets (as reported on its most recent year-end regulatory report) equal to $250 billion or more; (ii) has consolidated total on-balance sheet foreign exposures at the most recent year-end equal to $10 billion or more; or (iii) is a subsidiary of a bank holding company, bank, or savings association that would be required to use the proposed rule to calculate its risk-based capital requirements.

The agencies estimate that zero small bank holding companies (out of a total of approximately 2,919 small bank holding companies), 16 small national banks (out of a total of approximately 948 small national banks), one small state member bank (out of a total of approximately 468 small state member banks), one small state nonmember bank (out of a total of approximately 3,242 small state nonmember banks), and zero small savings associations (out of a total of approximately 419 small savings associations) would be subject to the final rule on a mandatory basis. In addition, each of the small banking organizations subject to the final rule on a mandatory basis is a subsidiary of a bank holding company with over $250 billion in consolidated total assets or over $10 billion in consolidated total on-balance sheet foreign exposure. Therefore, the agencies believe that the final rule will not result in a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, the agencies may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. OMB assigned the following control numbers to the collections of information: 1557–0234 (OCC), 3064–0153 (FDIC), and 1550–0115 (OTS). The Board assigned control number 7100–0313.

In September 2006 the OCC, FDIC, and OTS submitted the information collections contained in this rule to OMB for review and approval once the proposed rule was published. The Board, under authority delegated to it by OMB, also submitted the proposed information collection to OMB.

The agencies (OCC, FDIC, the Board, and OTS) determined that sections 21–24, 42, 44, 53, and 71 of the final rule contain collections of information. The final rule sets forth a new risk-based capital adequacy framework that would require some banks and allow other qualifying banks to use an internal ratings-based approach to calculate regulatory credit risk capital requirements and advanced measurement approaches to calculate regulatory operational risk capital requirements. The collections of information are necessary in order to implement the proposed advanced capital adequacy framework. The agencies received approximately ninety public comments. None of the comment letters specifically addressed the proposed burden estimates; therefore, the burden estimates will remain unchanged, as published in the notice of proposed rulemaking (71 FR 55830).

The affected public are: national banks and Federal branches and agencies of foreign banks (OCC); state member banks, bank holding companies, affiliates and certain non-bank subsidiaries of bank holding companies, uninsured state agencies and branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations (Board); insured nonmember banks, insured state branches of foreign banks, and certain subsidiaries of these entities (FDIC); and savings associations and certain of their subsidiaries (OTS).

Comment Request

The agencies have an ongoing interest in your comments. They should be sent to [Agency] Desk Officer, [OMB No.], by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

OCC Executive Order 12866

Executive Order 12866 requires Federal agencies to prepare a regulatory impact analysis for agency actions that are found to be ''significant regulatory actions.'' ''Significant regulatory actions'' include, among other things, rulemakings that ''have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.''[108] Regulatory actions that satisfy one or more of these criteria are referred to as ''economically significant regulatory actions.''

The OCC anticipates that the final rule will meet the $100 million criterion and therefore is an economically significant regulatory action. In conducting the regulatory analysis for an economically significant regulatory action, Executive Order 12866 requires each Federal agency to provide to the Administrator of the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA):

- The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need;
- An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions;
- An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;
- An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and
- An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

Set forth below is a summary of the OCC's regulatory impact analysis, which can be found in its entirety at *http://www.occ.treas.gov/law/basel.htm* under the link of ''Regulatory Impact Analysis for Risk-Based Capital Standards: Revised Capital Adequacy Guidelines (Basel II: Advanced Approach) 2007''.

I. The Need for the Regulatory Action

Federal banking law directs Federal banking agencies including the Office of the Comptroller of the Currency (OCC) to require banking organizations to hold adequate capital. The law authorizes Federal banking agencies to set minimum capital levels to ensure that banking organizations maintain adequate capital. The law also gives Federal banking agencies broad discretion with respect to capital regulation by authorizing them to also use any other methods that they deem appropriate to ensure capital adequacy.

Capital regulation seeks to address market failures that stem from several sources. Asymmetric information about the risk in a bank's portfolio creates a market failure by hindering the ability of creditors and outside monitors to discern a bank's actual risk and capital adequacy. Moral hazard creates market failure in which the bank's creditors fail to restrain the bank from taking excessive risks because deposit insurance either fully or partially protects them from losses. Public policy addresses these market failures because individual banks fail to adequately consider the positive externality or public benefit that adequate capital brings to financial markets and the economy as a whole.

Capital regulations cannot be static. Innovation in and transformation of financial markets require periodic reassessments of what may count as capital and what amount of capital is adequate. Continuing changes in financial markets create both a need and an opportunity to refine capital standards in banking. The Basel Committee on Banking Supervision's ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework'' (New Accord), and its implementation in the United States, reflects an appropriate step forward in addressing these changes.

II. Regulatory Background

The capital regulation examined in this analysis will apply to commercial banks and savings associations (collectively, banks). Three banking agencies, the OCC, the Board of Governors of the Federal Reserve System (Board), and the FDIC regulate commercial banks, while the Office of Thrift Supervision (OTS) regulates all federally chartered and many state-chartered savings associations. Throughout this document, the four are jointly referred to as the Federal banking agencies.

The New Accord comprises three mutually reinforcing ''pillars'' as summarized below.

1. Minimum Capital Requirements (Pillar 1)

The first pillar establishes a method for calculating minimum regulatory capital. It sets new requirements for assessing credit risk and operational risk while retaining the approach to market risk as developed in the 1996 amendments to the 1988 Accord.

The New Accord offers banks a choice of three methodologies for calculating a capital charge for credit risk. The first approach, called the Standardized Approach, essentially refines the risk-weighting framework of the 1988 Accord. The other two approaches are variations on an internal ratings-based (IRB) approach that leverages banks' internal credit-rating systems: a ''foundation'' methodology in which banks estimate the probability of borrower or obligor default, and an ''advanced'' approach in which banks also supply other inputs needed for the capital calculation. In addition, the new framework uses more risk-sensitive methods for dealing with collateral, guarantees, credit derivatives, securitizations, and receivables.

The New Accord also introduces an explicit capital requirement for operational risk.[109] The New Accord offers banks a choice of three methodologies for calculating their capital charge for operational risk. The first method, called the Basic Indicator Approach, requires banks to hold capital for operational risk equal to 15 percent of annual gross income (averaged over the most recent three years). The second option, called the

[108] 108 Executive Order 12866 (September 30, 1993), 58 FR 51735 (October 4, 1993), as amended by Executive Order 13258 (February 26, 2002), 67 FR 9385 (February 28, 2002) and by Executive Order 13422 (January 18, 2007), 72 FR 2763 (January 23, 2007). For the complete text of the definition of ''significant regulatory action,'' see E.O. 12866 at § 3(f). A ''regulatory action'' is ''any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.'' E.O. 12866 at § 3(e).

[109] Operational risk is the risk of loss resulting from inadequate or failed processes, people, and systems or from external events. It includes legal risk, but excludes strategic risk and reputation risk.

Standardized Approach, uses a formula that divides a bank's activities into eight business lines, calculates the capital charge for each business line as a fixed percentage of gross income (12 percent, 15 percent, or 18 percent depending on the nature of the business, again averaged over the most recent three years), and then sums across business lines. The third option, called the Advanced Measurement Approaches (AMA), uses an bank's internal operational risk measurement system to determine the capital requirement.

2. Supervisory Review Process (Pillar 2)

The second pillar calls upon banks to have an internal capital assessment process and banking supervisors to evaluate each bank's overall risk profile as well as its risk management and internal control processes. This pillar establishes an expectation that banks hold capital beyond the minimums computed under Pillar 1, including additional capital for any risks that are not adequately captured under Pillar 1. It encourages banks to develop better risk management techniques for monitoring and managing their risks. Pillar 2 also charges supervisors with the responsibility to ensure that banks using advanced Pillar 1 techniques, such as the IRB approach to credit risk and the AMA for operational risk (collectively, advanced approaches), comply with the minimum standards and disclosure requirements of those methods, and take action promptly if capital is not adequate.

3. Market Discipline (Pillar 3)

The third pillar of the New Accord sets minimum disclosure requirements for banks. The disclosures, covering the composition and structure of the bank's capital, the nature of its risk exposures, its risk management and internal control processes, and its capital adequacy, are intended to improve transparency and strengthen market discipline. By establishing a common set of disclosure requirements, Pillar 3 seeks to provide a consistent and understandable disclosure framework that market participants can use to assess key pieces of information on the risks and capital adequacy of a bank.

4. U.S. Implementation

The rule for implementing the New Accord's advanced approaches in the United States will apply the new framework to the largest and most internationally active banks. All banks will fall into one of three regulatory categories. The first category, called ''mandatory'' banks, consists of banks with consolidated assets of at least $250 billion or consolidated on-balance-sheet foreign exposures of $10 billion or more. Mandatory banks will have to use the New Accord's most advanced methods only: the Advanced IRB approach to determine capital for credit risk and the AMA to determine capital for operational risk. A second category of banks, called ''opt-in'' banks, includes banks that do not meet either size criteria of a mandatory bank but choose voluntarily to comply with the advanced approaches specified under the New Accord. The third category, called ''general'' banks, encompasses all other banks, and these will continue to operate under existing risk-based capital rules, subject to any amendments.

Various changes to the rules that apply to non-mandatory banks are under consideration. The Federal banking agencies have decided to issue for comment a proposal that would allow the voluntary adoption of the standardized approach for credit risk and the basic indicator approach for operational risk for non-mandatory banks (referred to hereafter as the Standardized Option). Because the Standardized Option would be a separate rulemaking, our analysis will focus just on the implementation of the Advanced Approaches. However, we will note how the Standardized Option might affect the outcome of our analysis if we anticipate the possibility that its adoption could lead to a significantly different outcome.

While introducing many significant changes, the U.S. implementation of the New Accord retains many components of the capital rules currently in effect. For example, it preserves existing Prompt Corrective Action provisions for all banks. The U.S. implementation of the New Accord also keeps intact most elements of the definition of what comprises regulatory capital.

III. Costs and Benefits of the Rule

This analysis considers the costs and benefits of the fully phased-in rule. Under the rule, current capital rules will remain in effect in 2008 during a parallel run using both old and new capital rules. For three years following the parallel run, the final rule will apply limits on the amount by which minimum required capital may decrease. This analysis, however, considers the costs and benefits of the rule as fully phased in.

Cost and benefit analysis of changes in minimum capital requirements entail considerable measurement problems. On the cost side, it can be difficult to attribute particular expenditures incurred by banks to the costs of implementation because banks would likely incur some of these costs as part of their ongoing efforts to improve risk measurement and management systems. On the benefits side, measurement problems are even greater because the benefits of the rule are more qualitative than quantitative. Measurement problems exist even with an apparently measurable effect such as lower minimum capital because lower minimum requirements do not necessarily mean lower capital levels held by banks. Healthy banks generally hold capital well above regulatory minimums for a variety of reasons, and the effect of reducing the regulatory minimum is uncertain and may vary across regulated banks.

Benefits of the Rule

1. *Better allocation of capital and reduced impact of moral hazard through reduction in the scope for regulatory arbitrage*: By assessing the amount of capital required for each exposure or pool of exposures, the advanced approaches do away with the simplistic risk buckets of current capital rules. Getting rid of categorical risk weighting and assigning capital based on measured risk instead greatly curtails or eliminates the ability of troubled banks to ''game'' regulatory capital requirements by finding ways to comply technically with the requirements while evading their intent and spirit.

2. *Improved signal quality of capital as an indicator of solvency*: The advanced approaches are designed to more accurately align regulatory capital with risk, which should improve the signal quality of capital as an indicator of solvency. The improved signaling quality of capital will enhance banking supervision and market discipline.

3. *Encourages banks to improve credit risk management*: One of the principal objectives of the rule is to more closely align capital charges and risk. For any type of credit, risk increases as either the probability of default or the loss given default increases. Under the final rule, the capital charge for credit risk depends on these risk parameter measures and consequently capital requirements will more closely reflect risk. This enhanced link between capital requirements and risk will encourage banks to improve credit risk management.

4. *More efficient use of required bank capital*: Increased risk sensitivity and improvements in risk measurement will allow prudential objectives to be achieved more efficiently. If capital rules can better align capital with risk across the system, a given level of capital will be able to support a higher level of banking activity while

maintaining the same degree of confidence regarding the safety and soundness of the banking system. Social welfare is enhanced by either the stronger condition of the banking system or the increased economic activity the additional banking services facilitate.

5. *Incorporates and encourages advances in risk measurement and risk management*: The rule seeks to improve upon existing capital regulations by incorporating advances in risk measurement and risk management made over the past 15 years. An objective of the rule is to speed adoption of new risk management techniques and to promote the further development of risk measurement and management through the regulatory process.

6. *Recognizes new developments and accommodates continuing innovation in financial products by focusing on risk*: The rule also has the benefit of facilitating recognition of new developments in financial products by focusing on the fundamentals behind risk rather than on static product categories.

7. *Better aligns capital and operational risk and encourages banks to mitigate operational risk*: Introducing an explicit capital calculation for operational risk eliminates the implicit and imprecise ''buffer'' that covers operational risk under current capital rules. Introducing an explicit capital requirement for operational risk improves assessments of the protection capital provides, particularly at banks where operational risk dominates other risks. The explicit treatment also increases the transparency of operational risk, which could encourage banks to take further steps to mitigate operational risk.

8. *Enhanced supervisory feedback*: Although U.S. banks have long been subject to close supervision, aspects of all three pillars of the rule aim to enhance supervisory feedback from Federal banking agencies to managers of banks. Enhanced feedback could further strengthen the safety and soundness of the banking system.

9. *Enhanced disclosure promotes market discipline*: The rule seeks to aid market discipline through the regulatory framework by requiring specific disclosures relating to risk measurement and risk management. Market discipline could complement regulatory supervision to bolster safety and soundness.

10. *Preserves the benefits of international consistency and coordination achieved with the 1988 Basel Accord*: An important objective of the 1988 Accord was competitive consistency of capital requirements for banks competing in global markets. The New Accord continues to pursue this objective. Because achieving this objective depends on the consistency of implementation in the United States and abroad, the Basel Committee on Banking Supervision (BCBS) has established an Accord Implementation Group to promote consistency in the implementation of the New Accord.

11. *Ability to opt in offers long-term flexibility to nonmandatory banks*: The U.S. implementation of the New Accord allows non-mandatory banks to individually judge when the benefits they expect to realize from adopting the advanced approaches outweigh their costs. Even though the cost and complexity of adopting the advanced methods may present non-mandatory banks with a substantial hurdle to opting in at present, the potential long-term benefits of allowing non-mandatory banks to partake in the benefits described above may be similarly substantial.

Costs of the Rule

Because banks are constantly developing programs and systems to improve how they measure and manage risk, it is difficult to distinguish between expenditures explicitly caused by adoption of this final rule and costs that would have occurred irrespective of any new regulation. In an effort to identify how much banks expect to spend to comply with the U.S. implementation of the New Accord's advanced approaches, the Federal banking agencies included several questions related to compliance costs in the fourth Quantitative Impact Study (QIS–4).[110]

1. *Overall Costs*: According to the 19 out of 26 QIS–4 questionnaire respondents that provided estimates of their implementation costs, banks will spend roughly $42 million on average to adapt to capital requirements implementing the New Accord's advanced approaches. Not all of these respondents are likely mandatory banks. Counting just the likely mandatory banks, the average is approximately $46 million, so there is little difference between banks that meet a mandatory threshold and those that do not. Aggregating estimated expenditures from all 19 respondents indicates that these banks will spend a total of $791 million over several years to implement the rule. Estimated costs for nine respondents meeting one of the mandatory thresholds come to $412 million.

2. *Estimate of costs specific to the rule*: Ten QIS–4 respondents provided estimates of the portion of costs they would have incurred even if current capital rules remain in effect. Those ten indicated that they would have spent 45 percent on average, or roughly half of their advanced approaches expenditures on improving risk management anyway. This suggests that of the $42 million banks expect to spend on implementation, approximately $21 million may represent expenditures each bank would have undertaken even without the New Accord. Thus, pure implementation costs may be closer to roughly $395 million for the 19 QIS–4 respondents.

3. *Ongoing costs*: Seven QIS–4 respondents were able to estimate what their recurring costs might be under the U.S implementation of the New Accord. On average, the seven banks estimate that annual recurring expenses attributable to the revised capital framework will be $2.4 million per bank. Banks indicated that the ongoing costs to maintain related technology reflect costs for increased personnel and system maintenance. The larger one-time expenditures to adopt this final rule primarily involve money for system development and software purchases.

4. *Implicit costs:* In addition to explicit setup and recurring costs, banks may also face implicit costs arising from the time and inconvenience of having to adapt to new capital regulations. At a minimum this involves the increased time and attention required of senior bank management to introduce new programs and procedures and the need to closely monitor the new activities during the inevitable rough patches when the rule first takes effect.

5. *Government Administrative Costs:* OCC expenditures fall into three broad categories: training, guidance, and supervision. Training includes expenses for AMA and IRB workshops, and other training courses and seminars for examiners. Guidance expenses reflect expenditures on the development of IRB and AMA guidance. Supervision expenses reflect bank-specific supervisory activities related to the development and implementation of the New Accord. The largest OCC expenditures have been on the development of IRB and AMA policy guidance. The $5.4 million spent on guidance represents 54 percent of the estimated total OCC advanced

[110] For more information on QIS–4, see Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision, ''Summary Findings of the Fourth Quantitative Impact Study,'' February 2006, available online at *http://www.occ.treas.gov/ftp/release/2006-23a.pdf.*

approaches-related expenditure of $10.0 million through the 2006 fiscal year. In part, this large share reflects the absence of data for training and supervision costs for several years, but it also is indicative of the large guidance expenses in 2002 and 2003 when the New Accord was in development. To date, New Accord expenditures have not been a large part of overall OCC expenditures. The $3 million spent on the advanced approaches in fiscal year 2006 represents less than one percent of the OCC's $579 million budget for the year.

6. *Total Cost:* The OCC's estimate of the total cost of the rule includes expenditures by banks and the OCC from the present through 2011, the final year of the transition period. Combining expenditures by mandatory banks and the OCC provides a present value estimate of $498.9 million for the total cost of the rule.

7. *Procyclicality:* Procyclicality refers to the possibility that banks may reduce lending during economic downturns and increase lending during economic expansions as a consequence of minimum capital requirements. There is some concern that the risk-sensitivity of the Advanced IRB approach may cause capital requirements for credit risk to increase during an economic downturn. Although procyclicality may be inherent in banking to some extent, elements of the advanced approaches could reduce inherent procyclicality. Risk management and information systems may provide bank managers with more forward-looking information about risk that will allow them to adjust portfolios gradually and with more foresight as the economic outlook changes over the business cycle. Regulatory stress-testing requirements included in the rule also will help ensure that banks anticipate cyclicality in capital requirements to the greatest extent possible, reducing the potential economic impact of changes in capital requirements.

IV. Competition Among Providers of Financial Services

One potential concern with any regulatory change is the possibility that it might create a competitive advantage for some banks relative to others, a possibility that certainly applies to a change with the scope of this final rule. However, measurement difficulties described in the preceding discussion of costs and benefits also extend to any consideration of the impact on competition. Despite the inherent difficulty of drawing definitive conclusions, this section considers various ways in which competitive effects might be manifest, as well as available evidence related to those potential effects.

1. *Explicit Capital for Operational Risk:* Some have noted that the explicit computation of required capital for operational risk could lead to an increase in total minimum regulatory capital for U.S. ''processing'' banks, generally defined as banks that tend to engage in a variety of activities related to securities clearing, asset management, and custodial services. Some have suggested that the increase in required capital could place such firms at a competitive disadvantage relative to competitors that do not face a similar capital requirement. A careful analysis by Fontnouvelle *et al.*[111] considers the potential competitive impact of the explicit capital requirement for operational risk. Overall, the study concludes that competitive effects from an explicit operational risk capital requirement should be, at most, extremely modest.

2. *Residential Mortgage Lending:* The issue of competitive effects has received substantial attention with respect to the residential mortgage market. The focus on the residential mortgage market stems from the size and importance of the market in the United States, and the fact that the rule may lead to substantial reductions in credit-risk capital for residential mortgages. To the extent that corresponding operational-risk capital requirements do not offset these credit-risk-related reductions, overall capital requirements for residential mortgages could decline under the rule. Studies by Calem and Follain[112] and Hancock, Lennert, Passmore, and Sherlund[113] suggest that banks operating under rules based on the New Accord's advance approaches may increase their holdings of residential mortgages. Calem and Follain argue that the increase would be significant and come at the expense of general banks. Hancock *et al.* foresee a more modest increase in residential mortgage holdings at banks operating under the advanced approaches rule, and they see this increase primarily as a shift away from the large government sponsored mortgage enterprises.

3. *Small Business Lending:* One potential avenue for competitive effects is small-business lending. Smaller banks—those that are less likely to adopt the advanced approaches to regulatory capital under the rule—tend to rely more heavily on smaller loans within their commercial loan portfolios. To the extent that the rule reduces required capital for such loans, general banks not operating under the rule might be placed at a competitive disadvantage. A study by Berger[114] finds some potential for a relatively small competitive effect on smaller banks in small business lending. However, Berger concludes that the small business market for large banks is very different from the small business market for smaller banks. For instance, a ''small business'' at a larger bank is usually much larger than small businesses at community banks.

4. *Mergers and Acquisitions:* Another concern related to potential changes in competitive conditions under the rule is that bifurcation of capital standards might change the landscape with regard to mergers and acquisitions in banking and financial services. For example, banks operating under this final rule might be placed in a better position to acquire banks operating under the old rules, possibly leading to an undesirable consolidation of the banking sector. Research by Hannan and Pilloff[115] suggests that the rule is unlikely to have a significant impact on merger and acquisition activity in banking.

5. *Credit Card Competition:* The U.S. implementation of the New Accord might also affect competition in the credit card market. Overall capital requirements for credit card loans could increase under the rule. This raises the possibility of a change in the competitive environment among banks subject to the new rules, nonbank credit card issuers, and banks not subject to this final rule. A study by Lang, Mester,

[111] Patrick de Fontnouvelle, Victoria Garrity, Scott Chu, and Eric Rosengren, ''The Potential Impact of Explicit Basel II Operational Risk Capital Charges on the Competitive Environment of Processing Banks in the United States,'' manuscript, Federal Reserve Bank of Boston, January 12, 2005. Available at *http://www.federalreserve.gov/generalinfo/basel2/whitepapers.htm*.

[112] Paul S. Calem and James R. Follain, ''Regulatory Capital Arbitrage and the Potential Competitive Impact of Basel II in the Market for Residential Mortgages'', *The Journal of Real Estate Finance and Economics,* Vol. 35, pp. 197–219, August 2007.

[113] Diana Hancock, Andreas Lennert, Wayne Passmore, and Shane M. Sherlund, ''An Analysis of the Potential Competitive Impact of Basel II Capital Standards on U.S. Mortgage Rates and Mortgage Securitization'', manuscript, Federal Reserve Board, April 2005. Available at *http://www.federalreserve.gov/generalinfo/basel2/whitepapers.htm*.

[114] Allen N. Berger, ''Potential Competitive Effects of Basel II on Banks in SME Credit Markets in the United States,'' *Journal of Financial Services Research,* 29:1, pp. 5–36, 2006. Also available at *http://www.federalreserve.gov/generalinfo/basel2/whitepapers.htm*.

[115] Timothy H. Hannan and Steven J. Pilloff, ''Will the Proposed Application of Basel II in the United States Encourage Increased Bank Merger Activity? Evidence from Past Merger Activity,'' Federal Reserve Board Finance and Economics Discussion Series, 2004–13, February 2004. Available at *http://www.federalreserve.gov/generalinfo/basel2/whitepapers.htm*.

and Vermilyea[116] finds that implementation of a rule based on the New Accord will not affect credit card competition at most community and regional banks. The authors also suggest that higher capital requirements for credit cards may only pose a modest disadvantage to banks that are subject to this final rule.

Overall, the evidence regarding the impact of this final rule on competitive equity is mixed. The body of recent economic research discussed in the body of this report does not reveal persuasive evidence of any sizeable competitive effects. Nonetheless, the Federal banking agencies recognize the need to closely monitor the competitive landscape subsequent to any regulatory change. In particular, the OCC and other Federal banking agencies will be alert for early signs of competitive inequities that might result from this final rule. A multi-year transition period before full implementation of this final rule should provide ample opportunity for the Federal banking agencies to identify any emerging problems. In particular, after the end of the second transition year, the agencies will conduct and publish a study that evaluates the advanced approaches to determine if there are any material deficiencies.[117] The Federal banking agencies will consider any egregious competitive effects associated with New Accord implementation, whether domestic or international in context, to be a material deficiency. To the extent that undesirable competitive inequities emerge, the agencies have the power to respond to them through many channels, including but not limited to suitable changes to the capital adequacy regulations.

V. Analysis of Baseline and Alternatives

In order to place the costs and benefits of the rule in context, Executive Order 12866 requires a comparison between this final rule, a baseline of what the world would look like without this final rule, and several reasonable alternatives to the rule. In this regulatory impact analysis, we analyze a baseline and three alternatives to the rule. The baseline analyzes the situation where the Federal banking agencies do not adopt this final rule, but other countries with internationally active banks do adopt the New Accord.[118]

1. *Baseline Scenario: Current capital standards based on the 1988 Basel Accord continue to apply to banks operating in the United States, but the rest of the world adopts the New Accord:* Abandoning the New Accord in favor of current capital rules would eliminate essentially all of the benefits of the rule described earlier. In place of these lost or diminished benefits, the only advantage of continuing to apply current capital rules to all banks is that maintaining the *status quo* should alleviate concerns regarding competition among domestic financial service providers. Although the effect of the rule on competition is uncertain in our estimation, staying with current capital rules (or universally applying a revised rule that might emerge from the Standardized Option) eliminates bifurcation. Concerns regarding competition usually center on this characteristic of the rule. However, the emergence of different capital rules across national borders would at least partially offset this advantage. Thus, while concerns regarding competition among U.S. financial service providers might diminish in this scenario, concerns regarding cross-border competition would likely increase. While continuing to use current capital rules eliminates most of the benefits of adopting the capital rule, it does not eliminate many costs associated with the New Accord. Because the New Accord-related costs are difficult to separate from the bank's ordinary development costs and ordinary supervisory costs at the Federal banking agencies, not implementing the New Accord would reduce but not eliminate many of these costs associated with the final rule.[119] Furthermore, because banks in the United States would be operating under a set of capital rules different from the rest of the world, U.S. banks that are internationally active may face higher costs because they will have to track and comply with more than one set of capital requirements.

2. *Alternative A: Permit U.S. banks to choose among all three New Accord credit risk approaches:* The principal benefit of Alternative A that the rule does not achieve is the increased flexibility of the regulation for banks that would be mandatory banks under the final rule. Banks that are not prepared for the adoption of the advanced approach to credit risk under the final rule could choose to use the Foundation IRB methodology or even the Standardized Approach. How Alternative A might affect benefits depends entirely on how many banks select each of the three available options. The most significant drawback to Alternative A is the increased cost of applying a new set of capital rules to all U.S. banks. The vast majority of banks in the United States would incur no direct costs from new capital rules. Under Alternative A, direct costs would increase for every U.S. bank that would have continued with current capital rules. Although it is not clear how high these costs might be, general banks would face higher costs because they would be changing capital rules regardless of which option they choose under Alternative A.

3. *Alternative B: Permit U.S. banks to choose among all three New Accord operational risk approaches:* The operational risk approach that banks ultimately selected would determine how the overall benefits of the new capital regulations would change under Alternative B. Just as Alternative A increases the flexibility of credit risk rules for mandatory banks, Alternative B is more flexible with respect to operational risk. Because the Standardized Approach tries to be more sensitive to variations in operational risk than the Basic Indicator Approach and AMA is more sensitive than the Standardized Approach, the effect of implementing Alternative B depends on how many banks select the more risk sensitive approaches. As was the case with Alternative A, the most significant drawback to Alternative B is the increased cost of applying a new set of capital rules to all U.S. banks.

Under Alternative B, direct costs would increase for every U.S. bank that would have continued with current capital rules. It is not clear how much it might cost banks to adopt these capital measures for operational risk, but general banks would face higher costs because they would be changing capital rules regardless of which option they choose under Alternative B.

4. *Alternative C: Use a different asset amount to determine a mandatory bank:* The number of mandatory banks decreases slowly as the size thresholds increase, and the number of banks grows more quickly as the thresholds decrease. Under Alternative C, the framework of the final rule would remain the same and only the number of mandatory banks would change. Because the structure of the

[116] William W. Lang, Loretta J. Mester, and Todd A. Vermilyea, ''Potential Competitive Effects on U.S. Bank Credit Card Lending from the Proposed Bifurcated Application of Basel II,'' manuscript, Federal Reserve Bank of Philadelphia, December 2005. Available at *http://www.philadelphiafed.org/files/wps/2005/wp05–29.pdf*.

[117] The full text of the Regulatory Impact Analysis describes the factors that the interagency study will consider.

[118] In addition to the United States, members of the BCBS implementing Basel II are Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, and the United Kingdom.

[119] Cost estimates for adopting a rule that might result from the Standardized Option are not currently available.

implementation would remain intact, Alternative C would capture all of the benefits of the final rule. However, because these benefits derive from applying the final rule to individual banks, changing the number of banks affected by the rule will change the cumulative level of the benefits achieved. Generally, the benefits associated with the rule will rise and fall with the number of mandatory banks. Because Alternative C would change the number of mandatory banks subject to the rule, aggregate costs will also rise or fall with the number of mandatory banks.

Overall Comparison of the Rule With Baselines and Alternatives

The New Accord and its U.S. implementation seek to incorporate risk measurement and risk management advances into capital requirements. Risk-sensitive capital requirements are integral to ensuring an adequate capital cushion to absorb financial losses at large complex financial banks. In implementing the New Accord's advanced approaches in the United States, the agencies' intent is to achieve risk-sensitivity while maintaining a regulatory capital regime that is as rigorous as the current system. Total capital requirements under the advanced approaches, including capital for operational risk, will better allocate capital in the system. This will occur regardless of whether the minimum required capital at a particular bank is greater or less than it would be under current capital rules. In order to ensure that we achieve our goal of increased risk sensitivity without loss of rigor, the final rule provides a means for the agencies to identify and address deficiencies in the capital requirements that may become apparent during the transition period.

Although the anticipated benefits of the final rule are difficult to quantify in dollar terms because of measurement problems, the OCC is confident that the anticipated benefits well exceed the anticipated costs of this regulation. On the basis of our analysis, we believe that the benefits of the final rule are significant, durable, and hold the potential to increase with time. The offsetting costs of implementing the final rule are also significant, but appear to be largely because of considerable start-up costs. However, much of the apparent start-up costs reflect activities that the banks would undertake as part of their ongoing efforts to improve the quality of their internal risk measurement and management, even in the absence of the New Accord and this final rule. The advanced approaches seem to have fairly modest ongoing expenses. Against these costs, the significant benefits of the New Accord suggest that the final rule offers an improvement over the baseline scenario.

With regard to the three alternative approaches we consider, the final rule offers an important degree of flexibility while significantly restricting costs by limiting its application to large, internationally active banks. Alternatives A and B introduce more flexibility from the perspective of the large mandatory banks, but each is less flexible with respect to other banks. Either Alternative A or B would compel these non-mandatory banks to select a new set of capital rules and require them to undertake the time and expense of adjusting to this final rule. Alternative C would change the number of mandatory banks. If the number of mandatory banks increases, then the new rule would lose some of the flexibility it achieves with the opt-in option. Furthermore, costs would increase as the final rule would compel more banks to incur the expense of adopting the advanced approaches. Decreasing the number of mandatory banks would decrease the aggregate social good of each benefit achieved with the final rule. The final rule offers a better balance between costs and benefits than any of the three alternatives.

OTS Executive Order 12866 Determination

OTS commented on the development of, and concurs with, OCC's RIA. Rather than replicate that analysis, OTS drafted an RIA incorporating OCC's analysis by reference and adding appropriate material reflecting the unique aspects of the thrift industry. The full text of OTS's RIA is available at the locations for viewing the OTS docket indicated in the **ADDRESSES** section above. OTS believes that its analysis meets the requirements of Executive Order 12866.

The following discussion supplements OCC's summary of its RIA.

The final rule will apply to approximately six mandatory and potential opt-in savings associations representing approximately 52 percent of total thrift industry assets. Approximately 76 percent of the total assets in these six institutions are concentrated in residential mortgage-related assets. By contrast, national banks tend to concentrate their assets in commercial loans and other kinds of non-mortgage loans. Only about 35 percent of national bank's total assets are residential mortgage-related assets. As a result, the costs and benefits of the final rule for OTS-regulated savings associations will differ in important ways from OCC-regulated national banks. These differences are the focus of OTS's analysis.

Benefits. Among the benefits of the final rule, OCC cites: (i) Better allocation of capital and reduced impact of moral hazard through reduction in the scope for regulatory arbitrage; (ii) improved signal quality of capital as an indicator of institution solvency; and (iii) more efficient use of required bank capital. From OTS's perspective, however, the final rule may not provide the degree of benefits anticipated by OCC from these sources.

Because of the typically low credit risk associated with residential mortgage-related assets, OTS believes that the risk-insensitive leverage ratio, rather than the risk-based capital ratio, may be more binding on savings association institutions.[120] As a result, these institutions may be required to hold more capital than would be required under Basel II risk-based standards alone. Therefore, the final rule may cause these institutions to incur much the same implementation costs as banks with riskier assets, but with reduced benefits.

Costs. OTS adopts the OCC cost analysis with the following supplemental information on OTS's administrative costs. OTS did not incur a meaningful amount of direct expenditures until 2002 when it transitioned from a monitoring role to active involvement in Basel II. Thereafter, expenditures increased rapidly. The OTS expenditures fall into two broad categories: policymaking expenses incurred in the development of the ANPR, the NPR, the final rule and related guidance; and supervision expenses that reflect institution-specific supervisory activities. OTS estimates that it incurred total expenses of $6,420,000 for fiscal years 2002 through 2006, including $4,080,000 in policymaking expenses and $2,340,000 in supervision expenses. OTS anticipates that supervision expenses will continue to grow as a percentage of the total expense as it moves from policy development to implementation

[120] The leverage ratio is the ratio of core capital to adjusted total assets. Under prompt corrective action requirements, savings associations must maintain a leverage ratio of at least five percent to be well capitalized and at least four percent to be adequately capitalized. Basel II will primarily affect the calculation of risk-weighted assets, rather than the calculation of total assets and will have only a modest impact on the calculation of core capital. Thus, the proposed Basel II changes should not significantly affect the calculated leverage ratio and a savings association that is currently constrained by the leverage ratio would not significantly benefit from the Basel II changes.

and training. To date, Basel II expenditures have not been a large part of overall expenditures.

Competition. OTS agrees with OCC's analysis of competition among providers of financial services. OTS adds, however, that some institutions with low credit risk portfolios face an existing competitive disadvantage because they are bound by a non-risk-based capital requirement—the leverage ratio. Thus, the agencies regulate a class of institutions that currently receive fewer capital benefits from risk-based capital rules because they are bound by the risk-insensitive leverage ratio. This anomaly will likely continue under the final rule.

In addition, the results from QIS–3 and QIS–4 suggest that the largest reductions in regulatory credit-risk capital requirements from the application of revised rules would occur in the residential mortgage loan area. Thus, to the extent regulatory credit-risk capital requirements affect pricing of such loans, it is possible that core and opt-in institutions who are not constrained by the leverage ratio may experience an improvement in their competitive standing vis-à-vis non-adopters and vis-à-vis adopters who are bound by the leverage ratio. Two research papers—one by Calem and Follain,[121] and another by Hancock, Lenhert, Passmore, and Sherlund[122] addressed this topic. The Calem and Follain paper argues that Basel II will significantly affect the competitive environment in mortgage lending; Hancock, et al. argue that it will not. Both papers are predicated, however, on the current capital regime for non-adopters. The agencies recently announced that they have agreed to issue a proposed rule that would provide non-core banks with the option to adopt an approach consistent with the standardized approach included in the Basel II framework. The standardized proposal will replace the earlier proposed rule (the Basel IA proposed rule), and would be available as an alternative to the existing risk-based capital rules for all U.S. banks other than banks that adopt the final Basel II rule. Such modifications, if implemented, would likely reduce the competitive advantage of Basel II adopters.

The final rule also has a ten percent floor on loss given default parameter estimates for residential mortgage segments that persists beyond the two-year period articulated in the international Basel II framework, providing a disincentive for core institutions to hold the least risky residential mortgages. This may have the effect of reducing the core banks'' advantage vis-à-vis both non-adopters and their international competitors.

Further, residential mortgages are subject to substantial interest rate risk. The agencies will retain the authority to require additional capital to cover interest rate risk. If regulatory capital requirements affect asset pricing, a substantial regulatory capital interest rate risk component could mitigate any competitive advantages of the proposed rule. Moreover, the capital requirement for interest rate risk would be subject to interpretation by each agency. A consistent evaluation of interest rate risk by the supervisory agencies would present a level playing field among the adopters—an important consideration given the potential size of the capital requirement.

OCC Unfunded Mandates Reform Act of 1995 Determination

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) requires cost-benefit and other analyses for a rule that would include any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. The current inflation-adjusted expenditure threshold is $119.6 million. The requirements of the UMRA include assessing a rule's effects on future compliance costs; particular regions or State, local, or tribal governments; communities; segments of the private sector; productivity; economic growth; full employment; creation of productive jobs; and the international competitiveness of U.S. goods and services. The final rule qualifies as a significant regulatory action under the UMRA because its Federal mandates may result in the expenditure by the private sector of $119.6 million or more in any one year. As permitted by section 202(c) of the UMRA, the required analyses have been prepared in conjunction with the Executive Order 12866 analysis document titled *Regulatory Impact Analysis for Risk-Based Capital Standards: Revised Capital Adequacy Guidelines*. The analysis is available on the Internet at *http://www.occ.treas.gov/law/basel.htm* under the link of ''Regulatory Impact Analysis for Risk-Based Capital Standards: Revised Capital Adequacy Guidelines (Basel II: Advanced Approach) 2007''.

OTS Unfunded Mandates Reform Act of 1995 Determination

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) requires cost-benefit and other analyses for a rule that would include any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. The current inflation-adjusted expenditure threshold is $119.6 million. The requirements of the UMRA include assessing a rule's effects on future compliance costs; particular regions or State, local, or tribal governments; communities; segments of the private sector; productivity; economic growth; full employment; creation of productive jobs; and the international competitiveness of U.S. goods and services. The final rule qualifies as a significant regulatory action under the UMRA because its Federal mandates may result in the expenditure by the private sector of $119.6 or more in any one year. As permitted by section 202(c) of the UMRA, the required analyses have been prepared in conjunction with the Executive Order 12866 analysis document titled *Regulatory Impact Analysis for Risk-Based Capital Standards: Revised Capital Adequacy Guidelines*. The analysis is available at the locations for viewing the OTS docket indicated in the **ADDRESSES** section above.

Text of Common Appendix (All Agencies)

The text of the agencies'' common appendix appears below:

[Appendix __ to Part __]—Capital Adequacy Guidelines for [Banks]: Internal-Ratings-Based and Advanced Measurement Approaches

[121] Paul S. Calem and James R. Follain, ''An Examination of How the Proposed Bifurcated Implementation of Basel II in the U.S. May Affect Competition Among Banking Organizations for Residential Mortgages,'' manuscript, January 14, 2005.

[122] Diana Hancock, Andreas Lenhert, Wayne Passmore, and Shane M Sherlund, ''An Analysis of the Competitive Impacts of Basel II Capital Standards on U.S. Mortgage Rates and Mortgage Securitization, March 7, 2005, Board of Governors of the Federal Reserve System, working paper.

Part I. General Provisions

Section 1. Purpose, Applicability, Reservation of Authority, and Principle of Conservatism

(a) *Purpose*. This appendix establishes:

(1) Minimum qualifying criteria for [banks] using [bank]-specific internal risk measurement and management processes for calculating risk-based capital requirements;

(2) Methodologies for such [banks] to calculate their risk-based capital requirements; and

(3) Public disclosure requirements for such [banks].

(b) *Applicability*. (1) This appendix applies to a [bank] that:

(i) Has consolidated total assets, as reported on the most recent year-end Consolidated Report of Condition and Income (Call Report) or Thrift Financial Report (TFR), equal to $250 billion or more;

(ii) Has consolidated total on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with head office or guarantor located in another country plus redistributed guaranteed amounts to the country of head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) Is a subsidiary of a depository institution that uses 12 CFR part 3, Appendix C, 12 CFR part 208, Appendix F, 12 CFR part 325, Appendix D, or 12 CFR part 567, Appendix C, to calculate its risk-based capital requirements; or

(iv) Is a subsidiary of a bank holding company that uses 12 CFR part 225, Appendix G, to calculate its risk-based capital requirements.

(2) Any [bank] may elect to use this appendix to calculate its risk-based capital requirements.

(3) A [bank] that is subject to this appendix must use this appendix unless the [AGENCY] determines in writing that application of this appendix is not appropriate in light of the [bank]'s asset size, level of complexity, risk profile, or scope of operations. In making a determination under this paragraph, the [AGENCY] will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.12 (for national banks), 12 CFR 263.202 (for bank holding companies and state member banks), 12 CFR 325.6(c) (for state nonmember banks), and 12 CFR 567.3(d) (for savings associations).

(c) *Reservation of authority*—(1) *Additional capital in the aggregate*. The [AGENCY] may require a [bank] to hold an amount of capital greater than otherwise required under this appendix if the [AGENCY] determines that the [bank]'s risk-based capital requirement under this appendix is not commensurate with the [bank]'s credit, market, operational, or other risks. In making a determination under this paragraph, the [AGENCY] will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.12 (for national banks), 12 CFR 263.202 (for bank holding companies and state member banks), 12 CFR 325.6(c) (for state nonmember banks), and 12 CFR 567.3(d) (for savings associations).

(2) *Specific risk-weighted asset amounts*. (i) If the [AGENCY] determines that the risk-weighted asset amount calculated under this appendix by the [bank] for one or more exposures is not commensurate with the risks associated with those exposures, the [AGENCY] may require the [bank] to assign a different risk-weighted asset amount to the exposures, to assign different risk parameters to the exposures (if the exposures are wholesale or retail exposures), or to use different model assumptions for the exposures (if relevant), all as specified by the [AGENCY].

(ii) If the [AGENCY] determines that the risk-weighted asset amount for operational risk produced by the [bank] under this appendix is not commensurate with the operational risks of the [bank], the [AGENCY] may require the [bank] to assign a different risk-weighted asset amount for operational risk, to change elements of its operational risk analytical framework, including distributional and dependence assumptions, or to make other changes to the [bank]'s operational risk management processes, data and assessment systems, or quantification systems, all as specified by the [AGENCY].

(3) *Other supervisory authority*. Nothing in this appendix limits the authority of the [AGENCY] under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law.

(d) *Principle of conservatism*. Notwithstanding the requirements of this appendix, a [bank] may choose not to apply a provision of this appendix to one or more exposures, provided that:

(1) The [bank] can demonstrate on an ongoing basis to the satisfaction of the [AGENCY] that not applying the provision would, in all circumstances, unambiguously generate a risk-based capital requirement for each such exposure greater than that which would otherwise be required under this appendix;

(2) The [bank] appropriately manages the risk of each such exposure;

(3) The [bank] notifies the [AGENCY] in writing prior to applying this principle to each such exposure; and

(4) The exposures to which the [bank] applies this principle are not, in the aggregate, material to the [bank].

Section 2. Definitions

Advanced internal ratings-based (IRB) systems means a [bank]'s internal risk rating and segmentation system; risk parameter quantification system; data management and maintenance system; and control, oversight, and validation system for credit risk of wholesale and retail exposures.

Advanced systems means a [bank]'s advanced IRB systems, operational risk management processes, operational risk data and assessment systems, operational risk quantification systems, and, to the extent the [bank] uses the following systems, the internal models methodology, double default excessive correlation detection process, IMA for equity exposures, and IAA for securitization exposures to ABCP programs.

Affiliate with respect to a company means any company that controls, is controlled by, or is under common control with, the company.

Applicable external rating means:

(1) With respect to an exposure that has multiple external ratings assigned by NRSROs, the lowest solicited external rating assigned to the exposure by any NRSRO; and

(2) With respect to an exposure that has a single external rating assigned by an NRSRO, the external rating assigned to the exposure by the NRSRO.

Applicable inferred rating means:

(1) With respect to an exposure that has multiple inferred ratings, the lowest inferred rating based on a solicited external rating; and

(2) With respect to an exposure that has a single inferred rating, the inferred rating.

Asset-backed commercial paper (ABCP) program means a program that primarily issues commercial paper that:

(1) Has an external rating; and

(2) Is backed by underlying exposures held in a bankruptcy-remote SPE.

Asset-backed commercial paper (ABCP) program sponsor means a [bank] that:

(1) Establishes an ABCP program;

(2) Approves the sellers permitted to participate in an ABCP program;

(3) Approves the exposures to be purchased by an ABCP program; or

(4) Administers the ABCP program by monitoring the underlying exposures, underwriting or otherwise arranging for the placement of debt or other obligations issued by the program, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

Backtesting means the comparison of a [bank]'s internal estimates with actual outcomes during a sample period not used in model development. In this context, backtesting is one form of out-of-sample testing.

Bank holding company is defined in section 2 of the Bank Holding Company Act (12 U.S.C. 1841).

Benchmarking means the comparison of a [bank]'s internal estimates with relevant internal and external data or with estimates based on other estimation techniques.

Business environment and internal control factors means the indicators of a [bank]'s operational risk profile that reflect a current and forward-looking assessment of the [bank]'s underlying business risk factors and internal control environment.

Carrying value means, with respect to an asset, the value of the asset on the balance sheet of the [bank], determined in accordance with GAAP.

Clean-up call means a contractual provision that permits an originating [bank] or servicer to call securitization exposures before their stated maturity or call date. See also *eligible clean-up call*.

Commodity derivative contract means a commodity-linked swap, purchased commodity-linked option, forward commodity-linked contract, or any other instrument linked to commodities that gives rise to similar counterparty credit risks.

Company means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

Control. A person or company *controls* a company if it:

(1) Owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the company; or

(2) Consolidates the company for financial reporting purposes.

Controlled early amortization provision means an early amortization provision that meets all the following conditions:

(1) The originating [bank] has appropriate policies and procedures to ensure that it has sufficient capital and liquidity available in the event of an early amortization;

(2) Throughout the duration of the securitization (including the early amortization period), there is the same pro rata sharing of interest, principal, expenses, losses, fees, recoveries, and other cash flows from the underlying exposures based on the originating [bank]'s and the investors' relative shares of the underlying exposures outstanding measured on a consistent monthly basis;

(3) The amortization period is sufficient for at least 90 percent of the total underlying exposures outstanding at the beginning of the early amortization period to be repaid or recognized as in default; and

(4) The schedule for repayment of investor principal is not more rapid than would be allowed by straight-line amortization over an 18-month period.

Credit derivative means a financial contract executed under standard industry credit derivative documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure) to another party (the protection provider). See also *eligible credit derivative*.

Credit-enhancing interest-only strip (CEIO) means an on-balance sheet asset that, in form or in substance:

(1) Represents a contractual right to receive some or all of the interest and no more than a minimal amount of principal due on the underlying exposures of a securitization; and

(2) Exposes the holder to credit risk directly or indirectly associated with the underlying exposures that exceeds a pro rata share of the holder's claim on the underlying exposures, whether through subordination provisions or other credit-enhancement techniques.

Credit-enhancing representations and warranties means representations and warranties that are made or assumed in connection with a transfer of underlying exposures (including loan servicing assets) and that obligate a [bank] to protect another party from losses arising from the credit risk of the underlying exposures. Credit-enhancing representations and warranties include provisions to protect a party from losses resulting from the default or nonperformance of the obligors of the underlying exposures or from an insufficiency in the value of the collateral backing the underlying exposures. Credit-enhancing representations and warranties do not include:

(1) Early default clauses and similar warranties that permit the return of, or premium refund clauses that cover, first-lien residential mortgage exposures for a period not to exceed 120 days from the date of transfer, provided that the date of transfer is within one year of origination of the residential mortgage exposure;

(2) Premium refund clauses that cover underlying exposures guaranteed, in whole or in part, by the U.S. government, a U.S. government agency, or a U.S. government sponsored enterprise, provided that the clauses are for a period not to exceed 120 days from the date of transfer; or

(3) Warranties that permit the return of underlying exposures in instances of misrepresentation, fraud, or incomplete documentation.

Credit risk mitigant means collateral, a credit derivative, or a guarantee.

Credit-risk-weighted assets means 1.06 multiplied by the sum of:

(1) Total wholesale and retail risk-weighted assets;

(2) Risk-weighted assets for securitization exposures; and

(3) Risk-weighted assets for equity exposures.

Current exposure means, with respect to a netting set, the larger of zero or the market value of a transaction or portfolio of transactions within the netting set that would be lost upon default of the counterparty, assuming no recovery on the value of the transactions. Current exposure is also called replacement cost.

Default—(1) *Retail*. (i) A retail exposure of a [bank] is in default if:

(A) The exposure is 180 days past due, in the case of a residential mortgage exposure or revolving exposure;

(B) The exposure is 120 days past due, in the case of all other retail exposures; or

(C) The [bank] has taken a full or partial charge-off, write-down of principal, or material negative fair value adjustment of principal on the exposure for credit-related reasons.

(ii) Notwithstanding paragraph (1)(i) of this definition, for a retail exposure held by a non-U.S. subsidiary of the [bank] that is subject to an internal ratings-based approach to capital adequacy consistent with the Basel Committee on Banking Supervision's ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework'' in a non-U.S. jurisdiction, the [bank] may elect to use the definition of default that is used in that jurisdiction, provided that the [bank] has obtained prior approval from the [AGENCY] to use the definition of default in that jurisdiction.

(iii) A retail exposure in default remains in default until the [bank] has reasonable assurance of repayment and performance for all contractual principal and interest payments on the exposure.

(2) *Wholesale*. (i) A [bank]'s wholesale obligor is in default if:

(A) The [bank] determines that the obligor is unlikely to pay its credit obligations to the [bank] in full, without recourse by the [bank] to actions such as realizing collateral (if held); or

(B) The obligor is past due more than 90 days on any material credit obligation(s) to the [bank].[1]

(ii) An obligor in default remains in default until the [bank] has reasonable assurance of repayment and performance for all contractual principal and interest payments on all exposures of the [bank] to the obligor (other than exposures that have been fully written-down or charged-off).

[1] Overdrafts are past due once the obligor has breached an advised limit or been advised of a limit smaller than the current outstanding balance.

Dependence means a measure of the association among operational losses across and within units of measure.

Depository institution is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

Derivative contract means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivatives, and any other instrument that poses similar counterparty credit risks. Derivative contracts also include unsettled securities, commodities, and foreign exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days.

Early amortization provision means a provision in the documentation governing a securitization that, when triggered, causes investors in the securitization exposures to be repaid before the original stated maturity of the securitization exposures, unless the provision:

(1) Is triggered solely by events not directly related to the performance of the underlying exposures or the originating [bank] (such as material changes in tax laws or regulations); or

(2) Leaves investors fully exposed to future draws by obligors on the underlying exposures even after the provision is triggered.

Economic downturn conditions means, with respect to an exposure held by the [bank], those conditions in which the aggregate default rates for that exposure's wholesale or retail exposure subcategory (or subdivision of such subcategory selected by the [bank]) in the exposure's national jurisdiction (or subdivision of such jurisdiction selected by the [bank]) are significantly higher than average.

Effective maturity (M) of a wholesale exposure means:

(1) For wholesale exposures other than repo-style transactions, eligible margin loans, and OTC derivative contracts described in paragraph (2) or (3) of this definition:

(i) The weighted-average remaining maturity (measured in years, whole or fractional) of the expected contractual cash flows from the exposure, using the undiscounted amounts of the cash flows as weights; or

(ii) The nominal remaining maturity (measured in years, whole or fractional) of the exposure.

(2) For repo-style transactions, eligible margin loans, and OTC derivative contracts subject to a qualifying master netting agreement for which the [bank] does not apply the internal models approach in paragraph (d) of section 32 of this appendix, the weighted-average remaining maturity (measured in years, whole or fractional) of the individual transactions subject to the qualifying master netting agreement, with the weight of each individual transaction set equal to the notional amount of the transaction.

(3) For repo-style transactions, eligible margin loans, and OTC derivative contracts for which the [bank] applies the internal models approach in paragraph (d) of section 32 of this appendix, the value determined in paragraph (d)(4) of section 32 of this appendix.

Effective notional amount means, for an eligible guarantee or eligible credit derivative, the lesser of the contractual notional amount of the credit risk mitigant and the EAD of the hedged exposure, multiplied by the percentage coverage of the credit risk mitigant. For example, the effective notional amount of an eligible guarantee that covers, on a pro rata basis, 40 percent of any losses on a $100 bond would be $40.

Eligible clean-up call means a clean-up call that:

(1) Is exercisable solely at the discretion of the originating [bank] or servicer;

(2) Is not structured to avoid allocating losses to securitization exposures held by investors or otherwise structured to provide credit enhancement to the securitization; and

(3) (i) For a traditional securitization, is only exercisable when 10 percent or less of the principal amount of the underlying exposures or securitization exposures (determined as of the inception of the securitization) is outstanding; or

(ii) For a synthetic securitization, is only exercisable when 10 percent or less of the principal amount of the reference portfolio of underlying exposures (determined as of the inception of the securitization) is outstanding.

Eligible credit derivative means a credit derivative in the form of a credit default swap, n^{th}-to-default swap, total return swap, or any other form of credit derivative approved by the [AGENCY], provided that:

(1) The contract meets the requirements of an eligible guarantee and has been confirmed by the protection purchaser and the protection provider;

(2) Any assignment of the contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap or n^{th}-to-default swap, the contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due, and similar events;

(4) The terms and conditions dictating the manner in which the contract is to be settled are incorporated into the contract;

(5) If the contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(6) If the contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld;

(7) If the credit derivative is a credit default swap or n^{th}-to-default swap, the contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event; and

(8) If the credit derivative is a total return swap and the [bank] records net payments received on the swap as net income, the [bank] records offsetting deterioration in the value of the hedged exposure (either through reductions in fair value or by an addition to reserves).

Eligible credit reserves means all general allowances that have been established through a charge against earnings to absorb credit losses associated with on- or off-balance sheet wholesale and retail exposures, including the allowance for loan and lease losses (ALLL) associated with such exposures but excluding allocated transfer risk reserves established pursuant to 12 U.S.C. 3904 and other specific reserves created against recognized losses.

Eligible double default guarantor, with respect to a guarantee or credit derivative obtained by a [bank], means:

(1) *U.S.-based entities.* A depository institution, a bank holding company, a savings and loan holding company (as defined in 12 U.S.C. 1467a) provided all or substantially all of the holding company's activities are permissible for a financial holding company under 12 U.S.C. 1843(k), a securities broker or dealer registered with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78o *et seq.*), or an insurance company in the business of providing credit protection (such as a monoline bond insurer or re-insurer) that is subject to supervision by a State insurance regulator, if:

(i) At the time the guarantor issued the guarantee or credit derivative or at any time thereafter, the [bank] assigned a PD to the guarantor's rating grade that was equal to or lower than the PD associated with a long-term external rating in the third-highest investment-grade rating category; and

(ii) The [bank] currently assigns a PD to the guarantor's rating grade that is equal to or lower than the PD associated with a long-term external rating in the lowest investment-grade rating category; or

(2) *Non-U.S.-based entities.* A foreign bank (as defined in § 211.2 of the Federal Reserve Board's Regulation K (12 CFR 211.2)), a non-U.S.-based securities firm, or a non-U.S.-based insurance company in the business of providing credit protection, if:

(i) The [bank] demonstrates that the guarantor is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies (as the case may be), or has issued and outstanding an unsecured long-term debt security without credit enhancement that has a long-term applicable external rating of at least investment grade;

(ii) At the time the guarantor issued the guarantee or credit derivative or at any time thereafter, the [bank] assigned a PD to the guarantor's rating grade that was equal to or lower than the PD associated with a long-term external rating in the third-highest investment-grade rating category; and

(iii) The [bank] currently assigns a PD to the guarantor's rating grade that is equal to or lower than the PD associated with a long-term external rating in the lowest investment-grade rating category.

Eligible guarantee means a guarantee that:

(1) Is written and unconditional;

(2) Covers all or a pro rata portion of all contractual payments of the obligor on the reference exposure;

(3) Gives the beneficiary a direct claim against the protection provider;

(4) Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;

(5) Is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;

(6) Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligor on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment;

(7) Does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure; and

(8) Is not provided by an affiliate of the [bank], unless the affiliate is an insured depository institution, bank, securities broker or dealer, or insurance company that:

(i) Does not control the [bank]; and

(ii) Is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies (as the case may be).

Eligible margin loan means an extension of credit where:

(1) The extension of credit is collateralized exclusively by liquid and readily marketable debt or equity securities, gold, or conforming residential mortgages;

(2) The collateral is marked to market daily, and the transaction is subject to daily margin maintenance requirements;

(3) The extension of credit is conducted under an agreement that provides the [bank] the right to accelerate and terminate the extension of credit and to liquidate or set off collateral promptly upon an event of default (including upon an event of bankruptcy, insolvency, or similar proceeding) of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions; [2] and

(4) The [bank] has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that the agreement meets the requirements of paragraph (3) of this definition and is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

Eligible operational risk offsets means amounts, not to exceed expected operational loss, that:

(1) Are generated by internal business practices to absorb highly predictable and reasonably stable operational losses, including reserves calculated consistent with GAAP; and

(2) Are available to cover expected operational losses with a high degree of certainty over a one-year horizon.

Eligible purchased wholesale exposure means a purchased wholesale exposure that:

(1) The [bank] or securitization SPE purchased from an unaffiliated seller and did not directly or indirectly originate;

(2) Was generated on an arm's-length basis between the seller and the obligor (intercompany accounts receivable and receivables subject to contra-accounts between firms that buy and sell to each other do not satisfy this criterion);

(3) Provides the [bank] or securitization SPE with a claim on all proceeds from the exposure or a pro rata interest in the proceeds from the exposure;

(4) Has an M of less than one year; and

(5) When consolidated by obligor, does not represent a concentrated exposure relative to the portfolio of purchased wholesale exposures.

Eligible securitization guarantor means:

(1) A sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), a multilateral development bank, a depository institution, a bank holding company, a savings and loan holding company (as defined in 12 U.S.C. 1467a) provided all or substantially all of the holding company's activities are permissible for a financial holding company under 12 U.S.C. 1843(k), a foreign bank (as defined in § 211.2 of the Federal Reserve Board's Regulation K (12 CFR 211.2)), or a securities firm;

(2) Any other entity (other than a securitization SPE) that has issued and outstanding an unsecured long-term debt security without credit enhancement that has a long-term applicable external rating in one of the three highest investment-grade rating categories; or

(3) Any other entity (other than a securitization SPE) that has a PD assigned by the [bank] that is lower than or equal to the PD associated with a long-term external rating in the third highest investment-grade rating category.

Eligible servicer cash advance facility means a servicer cash advance facility in which:

(1) The servicer is entitled to full reimbursement of advances, except that a servicer may be obligated to make non-reimbursable advances for a particular underlying exposure if any such advance is contractually limited to an insignificant amount of the outstanding principal balance of that exposure;

(2) The servicer's right to reimbursement is senior in right of payment to all other claims on the cash flows from the underlying exposures of the securitization; and

(3) The servicer has no legal obligation to, and does not, make advances to the securitization if the servicer concludes the advances are unlikely to be repaid.

Equity derivative contract means an equity-linked swap, purchased equity-linked option, forward equity-linked contract, or any other instrument linked to equities that gives rise to similar counterparty credit risks.

Equity exposure means:

(1) A security or instrument (whether voting or non-voting) that represents a direct or indirect ownership interest in, and is a residual claim on, the assets and income of a company, unless:

(i) The issuing company is consolidated with the [bank] under GAAP;

(ii) The [bank] is required to deduct the ownership interest from tier 1 or tier 2 capital under this appendix;

(iii) The ownership interest incorporates a payment or other similar obligation on the part of the issuing company (such as an obligation to make periodic payments); or

(iv) The ownership interest is a securitization exposure;

(2) A security or instrument that is mandatorily convertible into a security or instrument described in paragraph (1) of this definition;

(3) An option or warrant that is exercisable for a security or instrument described in paragraph (1) of this definition; or

(4) Any other security or instrument (other than a securitization exposure) to the extent the return on the security or instrument is based on the performance of a security or instrument described in paragraph (1) of this definition.

Excess spread for a period means:

(1) Gross finance charge collections and other income received by a securitization SPE (including market interchange fees) over a period minus interest paid to the holders of the securitization exposures, servicing fees, charge-offs, and other senior trust or similar expenses of the SPE over the period; divided by

(2) The principal balance of the underlying exposures at the end of the period.

Exchange rate derivative contract means a cross-currency interest rate swap, forward foreign-exchange contract, currency option purchased, or any other instrument linked to exchange rates that gives rise to similar counterparty credit risks.

Excluded mortgage exposure means any one-to four-family residential pre-sold construction loan for a residence for which the purchase contract is cancelled that would receive a 100 percent risk weight under

[2] This requirement is met where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute ''securities contracts'' under section 555 of the Bankruptcy Code (11 U.S.C. 555), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or netting contracts between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407) or the Federal Reserve Board's Regulation EE (12 CFR part 231).

section 618(a)(2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act and under 12 CFR part 3, Appendix A, section 3(a)(3)(iii) (for national banks), 12 CFR part 208, Appendix A, section III.C.3. (for state member banks), 12 CFR part 225, Appendix A, section III.C.3. (for bank holding companies), 12 CFR part 325, Appendix A, section II.C.a. (for state nonmember banks), or 12 CFR 567.1 (definition of ''qualifying residential construction loan'') and 12 CFR 567.6(a)(1)(iv) (for savings associations).

Expected credit loss (ECL) means:

(1) For a wholesale exposure to a non-defaulted obligor or segment of non-defaulted retail exposures that is carried at fair value with gains and losses flowing through earnings or that is classified as held-for-sale and is carried at the lower of cost or fair value with losses flowing through earnings, zero.

(2) For all other wholesale exposures to non-defaulted obligors or segments of non-defaulted retail exposures, the product of PD times LGD times EAD for the exposure or segment.

(3) For a wholesale exposure to a defaulted obligor or segment of defaulted retail exposures, the [bank]'s impairment estimate for allowance purposes for the exposure or segment.

(4) Total ECL is the sum of expected credit losses for all wholesale and retail exposures other than exposures for which the [bank] has applied the double default treatment in section 34 of this appendix.

Expected exposure (EE) means the expected value of the probability distribution of non-negative credit risk exposures to a counterparty at any specified future date before the maturity date of the longest term transaction in the netting set. Any negative market values in the probability distribution of market values to a counterparty at a specified future date are set to zero to convert the probability distribution of market values to the probability distribution of credit risk exposures.

Expected operational loss (EOL) means the expected value of the distribution of potential aggregate operational losses, as generated by the [bank]'s operational risk quantification system using a one-year horizon.

Expected positive exposure (EPE) means the weighted average over time of expected (non-negative) exposures to a counterparty where the weights are the proportion of the time interval that an individual expected exposure represents. When calculating risk-based capital requirements, the average is taken over a one-year horizon.

Exposure at default (EAD). (1) For the on-balance sheet component of a wholesale exposure or segment of retail exposures (other than an OTC derivative contract, or a repo-style transaction or eligible margin loan for which the [bank] determines EAD under section 32 of this appendix), EAD means:

(i) If the exposure or segment is a security classified as available-for-sale, the [bank]'s carrying value (including net accrued but unpaid interest and fees) for the exposure or segment less any allocated transfer risk reserve for the exposure or segment, less any unrealized gains on the exposure or segment, and plus any unrealized losses on the exposure or segment; or

(ii) If the exposure or segment is not a security classified as available-for-sale, the [bank]'s carrying value (including net accrued but unpaid interest and fees) for the exposure or segment less any allocated transfer risk reserve for the exposure or segment.

(2) For the off-balance sheet component of a wholesale exposure or segment of retail exposures (other than an OTC derivative contract, or a repo-style transaction or eligible margin loan for which the [bank] determines EAD under section 32 of this appendix) in the form of a loan commitment, line of credit, trade-related letter of credit, or transaction-related contingency, EAD means the [bank]'s best estimate of net additions to the outstanding amount owed the [bank], including estimated future additional draws of principal and accrued but unpaid interest and fees, that are likely to occur over a one-year horizon assuming the wholesale exposure or the retail exposures in the segment were to go into default. This estimate of net additions must reflect what would be expected during economic downturn conditions. Trade-related letters of credit are short-term, self-liquidating instruments that are used to finance the movement of goods and are collateralized by the underlying goods. Transaction-related contingencies relate to a particular transaction and include, among other things, performance bonds and performance-based letters of credit.

(3) For the off-balance sheet component of a wholesale exposure or segment of retail exposures (other than an OTC derivative contract, or a repo-style transaction or eligible margin loan for which the [bank] determines EAD under section 32 of this appendix) in the form of anything other than a loan commitment, line of credit, trade-related letter of credit, or transaction-related contingency, EAD means the notional amount of the exposure or segment.

(4) EAD for OTC derivative contracts is calculated as described in section 32 of this appendix. A [bank] also may determine EAD for repo-style transactions and eligible margin loans as described in section 32 of this appendix.

(5) For wholesale or retail exposures in which only the drawn balance has been securitized, the [bank] must reflect its share of the exposures' undrawn balances in EAD. Undrawn balances of revolving exposures for which the drawn balances have been securitized must be allocated between the seller's and investors' interests on a pro rata basis, based on the proportions of the seller's and investors' shares of the securitized drawn balances.

Exposure category means any of the wholesale, retail, securitization, or equity exposure categories.

External operational loss event data means, with respect to a [bank], gross operational loss amounts, dates, recoveries, and relevant causal information for operational loss events occurring at organizations other than the [bank].

External rating means a credit rating that is assigned by an NRSRO to an exposure, provided:

(1) The credit rating fully reflects the entire amount of credit risk with regard to all payments owed to the holder of the exposure. If a holder is owed principal and interest on an exposure, the credit rating must fully reflect the credit risk associated with timely repayment of principal and interest. If a holder is owed only principal on an exposure, the credit rating must fully reflect only the credit risk associated with timely repayment of principal; and

(2) The credit rating is published in an accessible form and is or will be included in the transition matrices made publicly available by the NRSRO that summarize the historical performance of positions rated by the NRSRO.

Financial collateral means collateral:

(1) In the form of:

(i) Cash on deposit with the [bank] (including cash held for the [bank] by a third-party custodian or trustee);

(ii) Gold bullion;

(iii) Long-term debt securities that have an applicable external rating of one category below investment grade or higher;

(iv) Short-term debt instruments that have an applicable external rating of at least investment grade;

(v) Equity securities that are publicly traded;

(vi) Convertible bonds that are publicly traded;

(vii) Money market mutual fund shares and other mutual fund shares if a price for the shares is publicly quoted daily; or (viii) Conforming residential mortgages; and

(2) In which the [bank] has a perfected, first priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent).

GAAP means generally accepted accounting principles as used in the United States.

Gain-on-sale means an increase in the equity capital (as reported on Schedule RC of the Call Report, Schedule HC of the FR Y–9C Report, or Schedule SC of the Thrift Financial Report) of a [bank] that results from a securitization (other than an increase in equity capital that results from the [bank]'s receipt of cash in connection with the securitization).

Guarantee means a financial guarantee, letter of credit, insurance, or other similar financial instrument (other than a credit derivative) that allows one party (beneficiary) to transfer the credit risk of one or more specific exposures (reference exposure) to another party (protection provider). See also *eligible guarantee.*

High volatility commercial real estate (HVCRE) exposure means a credit facility that finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances:

(1) One- to four-family residential properties; or

(2) Commercial real estate projects in which:

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the [AGENCY]'s real estate lending standards at 12 CFR part 34, Subpart D (OCC); 12 CFR part 208, Appendix C (Board); 12 CFR part 365, Subpart D (FDIC); and 12 CFR 560.100–560.101 (OTS);

(ii) The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised ''as completed'' value; and

(iii) The borrower contributed the amount of capital required by paragraph (2)(ii) of this definition before the [bank] advances funds under the credit facility, and the capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project. The life of a project concludes only when the credit facility is converted to permanent financing or is sold or paid in full. Permanent financing may be provided by the [bank] that provided the ADC facility as long as the permanent financing is subject to the [bank]'s underwriting criteria for long-term mortgage loans.

Inferred rating. A securitization exposure has an *inferred rating* equal to the external rating referenced in paragraph (2)(i) of this definition if:

(1) The securitization exposure does not have an external rating; and

(2) Another securitization exposure issued by the same issuer and secured by the same underlying exposures:

(i) Has an external rating;

(ii) Is subordinated in all respects to the unrated securitization exposure;

(iii) Does not benefit from any credit enhancement that is not available to the unrated securitization exposure; and

(iv) Has an effective remaining maturity that is equal to or longer than that of the unrated securitization exposure.

Interest rate derivative contract means a single-currency interest rate swap, basis swap, forward rate agreement, purchased interest rate option, when-issued securities, or any other instrument linked to interest rates that gives rise to similar counterparty credit risks.

Internal operational loss event data means, with respect to a [bank], gross operational loss amounts, dates, recoveries, and relevant causal information for operational loss events occurring at the [bank].

Investing [bank] means, with respect to a securitization, a [bank] that assumes the credit risk of a securitization exposure (other than an originating [bank] of the securitization). In the typical synthetic securitization, the investing [bank] sells credit protection on a pool of underlying exposures to the originating [bank].

Investment fund means a company:

(1) All or substantially all of the assets of which are financial assets; and

(2) That has no material liabilities.

Investors' interest EAD means, with respect to a securitization, the EAD of the underlying exposures multiplied by the ratio of:

(1) The total amount of securitization exposures issued by the securitization SPE to investors; divided by

(2) The outstanding principal amount of underlying exposures.

Loss given default (LGD) means:

(1) For a wholesale exposure, the greatest of:

(i) Zero;

(ii) The [bank]'s empirically based best estimate of the long-run default-weighted average economic loss, per dollar of EAD, the [bank] would expect to incur if the obligor (or a typical obligor in the loss severity grade assigned by the [bank] to the exposure) were to default within a one-year horizon over a mix of economic conditions, including economic downturn conditions; or

(iii) The [bank]'s empirically based best estimate of the economic loss, per dollar of EAD, the [bank] would expect to incur if the obligor (or a typical obligor in the loss severity grade assigned by the [bank] to the exposure) were to default within a one-year horizon during economic downturn conditions.

(2) For a segment of retail exposures, the greatest of:

(i) Zero;

(ii) The [bank]'s empirically based best estimate of the long-run default-weighted average economic loss, per dollar of EAD, the [bank] would expect to incur if the exposures in the segment were to default within a one-year horizon over a mix of economic conditions, including economic downturn conditions; or

(iii) The [bank]'s empirically based best estimate of the economic loss, per dollar of EAD, the [bank] would expect to incur if the exposures in the segment were to default within a one-year horizon during economic downturn conditions.

(3) The economic loss on an exposure in the event of default is all material credit-related losses on the exposure (including accrued but unpaid interest or fees, losses on the sale of collateral, direct workout costs, and an appropriate allocation of indirect workout costs). Where positive or negative cash flows on a wholesale exposure to a defaulted obligor or a defaulted retail exposure (including proceeds from the sale of collateral, workout costs, additional extensions of credit to facilitate repayment of the exposure, and draw-downs of unused credit lines) occur after the date of default, the economic loss must reflect the net present value of cash flows as of the default date using a discount rate appropriate to the risk of the defaulted exposure.

Main index means the Standard & Poor's 500 Index, the FTSE All-World Index, and any other index for which the [bank] can demonstrate to the satisfaction of the [AGENCY] that the equities represented in the index have comparable liquidity, depth of market, and size of bid-ask spreads as equities in the Standard & Poor's 500 Index and FTSE All-World Index.

Multilateral development bank means the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other multilateral lending institution or regional development bank in which the U.S. government is a shareholder or contributing member or which the [AGENCY] determines poses comparable credit risk.

Nationally recognized statistical rating organization (NRSRO) means an entity registered with the SEC as a nationally recognized statistical rating organization under section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7).

Netting set means a group of transactions with a single counterparty that are subject to a qualifying master netting agreement or qualifying cross-product master netting agreement. For purposes of the internal models methodology in paragraph (d) of section 32 of this appendix, each transaction that is not subject to such a master netting agreement is its own netting set.

N^{th}-to-default credit derivative means a credit derivative that provides credit protection only for the n^{th}-defaulting reference exposure in a group of reference exposures.

Obligor means the legal entity or natural person contractually obligated on a wholesale exposure, except that a [bank] may treat the following exposures as having separate obligors:

(1) Exposures to the same legal entity or natural person denominated in different currencies;

(2) (i) An income-producing real estate exposure for which all or substantially all of the repayment of the exposure is reliant on the cash flows of the real estate serving as collateral for the exposure; the [bank], in economic substance, does not have recourse to the borrower beyond the real estate collateral; and no cross-default or cross-acceleration clauses are in place other than clauses obtained solely out of an abundance of caution; and

(ii) Other credit exposures to the same legal entity or natural person; and

(3) (i) A wholesale exposure authorized under section 364 of the U.S. Bankruptcy Code (11 U.S.C. 364) to a legal entity or natural person who is a debtor-in-possession for purposes of Chapter 11 of the Bankruptcy Code; and

(ii) Other credit exposures to the same legal entity or natural person.

Operational loss means a loss (excluding insurance or tax effects) resulting from an operational loss event. Operational loss includes all expenses associated with an operational loss event except for opportunity costs, forgone revenue, and costs related to risk management and control enhancements implemented to prevent future operational losses.

Operational loss event means an event that results in loss and is associated with any of the following seven operational loss event type categories:

(1) Internal fraud, which means the operational loss event type category that comprises operational losses resulting from an act involving at least one internal party of a type intended to defraud, misappropriate

property, or circumvent regulations, the law, or company policy, excluding diversity- and discrimination-type events.

(2) External fraud, which means the operational loss event type category that comprises operational losses resulting from an act by a third party of a type intended to defraud, misappropriate property, or circumvent the law. Retail credit card losses arising from non-contractual, third-party initiated fraud (for example, identity theft) are external fraud operational losses. All other third-party initiated credit losses are to be treated as credit risk losses.

(3) Employment practices and workplace safety, which means the operational loss event type category that comprises operational losses resulting from an act inconsistent with employment, health, or safety laws or agreements, payment of personal injury claims, or payment arising from diversity- and discrimination-type events.

(4) Clients, products, and business practices, which means the operational loss event type category that comprises operational losses resulting from the nature or design of a product or from an unintentional or negligent failure to meet a professional obligation to specific clients (including fiduciary and suitability requirements).

(5) Damage to physical assets, which means the operational loss event type category that comprises operational losses resulting from the loss of or damage to physical assets from natural disaster or other events.

(6) Business disruption and system failures, which means the operational loss event type category that comprises operational losses resulting from disruption of business or system failures.

(7) Execution, delivery, and process management, which means the operational loss event type category that comprises operational losses resulting from failed transaction processing or process management or losses arising from relations with trade counterparties and vendors.

Operational risk means the risk of loss resulting from inadequate or failed internal processes, people, and systems or from external events (including legal risk but excluding strategic and reputational risk).

Operational risk exposure means the 99.9th percentile of the distribution of potential aggregate operational losses, as generated by the [bank]'s operational risk quantification system over a one-year horizon (and not incorporating eligible operational risk offsets or qualifying operational risk mitigants).

Originating [bank], with respect to a securitization, means a [bank] that:

(1) Directly or indirectly originated or securitized the underlying exposures included in the securitization; or

(2) Serves as an ABCP program sponsor to the securitization.

Other retail exposure means an exposure (other than a securitization exposure, an equity exposure, a residential mortgage exposure, an excluded mortgage exposure, a qualifying revolving exposure, or the residual value portion of a lease exposure) that is managed as part of a segment of exposures with homogeneous risk characteristics, not on an individual-exposure basis, and is either:

(1) An exposure to an individual for non-business purposes; or

(2) An exposure to an individual or company for business purposes if the [bank]'s consolidated business credit exposure to the individual or company is $1 million or less.

Over-the-counter (OTC) derivative contract means a derivative contract that is not traded on an exchange that requires the daily receipt and payment of cash-variation margin.

Probability of default (PD) means:

(1) For a wholesale exposure to a non-defaulted obligor, the [bank]'s empirically based best estimate of the long-run average one-year default rate for the rating grade assigned by the [bank] to the obligor, capturing the average default experience for obligors in the rating grade over a mix of economic conditions (including economic downturn conditions) sufficient to provide a reasonable estimate of the average one-year default rate over the economic cycle for the rating grade.

(2) For a segment of non-defaulted retail exposures, the [bank]'s empirically based best estimate of the long-run average one-year default rate for the exposures in the segment, capturing the average default experience for exposures in the segment over a mix of economic conditions (including economic downturn conditions) sufficient to provide a reasonable estimate of the average one-year default rate over the economic cycle for the segment and adjusted upward as appropriate for segments for which seasoning effects are material. For purposes of this definition, a segment for which seasoning effects are material is a segment where there is a material relationship between the time since origination of exposures within the segment and the [bank]'s best estimate of the long-run average one-year default rate for the exposures in the segment.

(3) For a wholesale exposure to a defaulted obligor or segment of defaulted retail exposures, 100 percent.

Protection amount (P) means, with respect to an exposure hedged by an eligible guarantee or eligible credit derivative, the effective notional amount of the guarantee or credit derivative, reduced to reflect any currency mismatch, maturity mismatch, or lack of restructuring coverage (as provided in section 33 of this appendix).

Publicly traded means traded on:

(1) Any exchange registered with the SEC as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question, meaning that there are enough independent bona fide offers to buy and sell so that a sales price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and a trade can be settled at such a price within five business days.

Qualifying central counterparty means a counterparty (for example, a clearinghouse) that:

(1) Facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts;

(2) Requires all participants in its arrangements to be fully collateralized on a daily basis; and

(3) The [bank] demonstrates to the satisfaction of the [AGENCY] is in sound financial condition and is subject to effective oversight by a national supervisory authority.

Qualifying cross-product master netting agreement means a qualifying master netting agreement that provides for termination and close-out netting across multiple types of financial transactions or qualifying master netting agreements in the event of a counterparty's default, provided that:

(1) The underlying financial transactions are OTC derivative contracts, eligible margin loans, or repo-style transactions; and

(2) The [bank] obtains a written legal opinion verifying the validity and enforceability of the agreement under applicable law of the relevant jurisdictions if the counterparty fails to perform upon an event of default, including upon an event of bankruptcy, insolvency, or similar proceeding.

Qualifying master netting agreement means any written, legally enforceable bilateral agreement, provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including bankruptcy, insolvency, or similar proceeding, of the counterparty;

(2) The agreement provides the [bank] the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon an event of bankruptcy, insolvency, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions;

(3) The [bank] has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of paragraph (2) of this definition; and

(ii) In the event of a legal challenge (including one resulting from default or from bankruptcy, insolvency, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions;

(4) The [bank] establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition; and

(5) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it would make otherwise under the agreement, or no

payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement).

Qualifying revolving exposure (QRE) means an exposure (other than a securitization exposure or equity exposure) to an individual that is managed as part of a segment of exposures with homogeneous risk characteristics, not on an individual-exposure basis, and:

(1) Is revolving (that is, the amount outstanding fluctuates, determined largely by the borrower's decision to borrow and repay, up to a pre-established maximum amount);

(2) Is unsecured and unconditionally cancelable by the [bank] to the fullest extent permitted by Federal law; and

(3) Has a maximum exposure amount (drawn plus undrawn) of up to $100,000.

Repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the [bank] acts as agent for a customer and indemnifies the customer against loss, provided that:

(1) The transaction is based solely on liquid and readily marketable securities, cash, gold, or conforming residential mortgages;

(2) The transaction is marked-to-market daily and subject to daily margin maintenance requirements;

(3)(i) The transaction is a ''securities contract'' or ''repurchase agreement'' under section 555 or 559, respectively, of the Bankruptcy Code (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407) or the Federal Reserve Board's Regulation EE (12 CFR part 231); or

(ii) If the transaction does not meet the criteria set forth in paragraph (3)(i) of this definition, then either:

(A) The transaction is executed under an agreement that provides the [bank] the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set off collateral promptly upon an event of default (including upon an event of bankruptcy, insolvency, or similar proceeding) of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions; or

(B) The transaction is:

(*1*) Either overnight or unconditionally cancelable at any time by the [bank]; and

(*2*) Executed under an agreement that provides the [bank] the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set off collateral promptly upon an event of counterparty default; and

(4) The [bank] has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that the agreement meets the requirements of paragraph (3) of this definition and is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

Residential mortgage exposure means an exposure (other than a securitization exposure, equity exposure, or excluded mortgage exposure) that is managed as part of a segment of exposures with homogeneous risk characteristics, not on an individual-exposure basis, and is:

(1) An exposure that is primarily secured by a first or subsequent lien on one- to four-family residential property; or

(2) An exposure with an original and outstanding amount of $1 million or less that is primarily secured by a first or subsequent lien on residential property that is not one to four family.

Retail exposure means a residential mortgage exposure, a qualifying revolving exposure, or an other retail exposure.

Retail exposure subcategory means the residential mortgage exposure, qualifying revolving exposure, or other retail exposure subcategory.

Risk parameter means a variable used in determining risk-based capital requirements for wholesale and retail exposures, specifically probability of default (PD), loss given default (LGD), exposure at default (EAD), or effective maturity (M).

Scenario analysis means a systematic process of obtaining expert opinions from business managers and risk management experts to derive reasoned assessments of the likelihood and loss impact of plausible high-severity operational losses. Scenario analysis may include the well-reasoned evaluation and use of external operational loss event data, adjusted as appropriate to ensure relevance to a [bank]'s operational risk profile and control structure.

SEC means the U.S. Securities and Exchange Commission.

Securitization means a traditional securitization or a synthetic securitization.

Securitization exposure means an on-balance sheet or off-balance sheet credit exposure that arises from a traditional or synthetic securitization (including credit-enhancing representations and warranties).

Securitization special purpose entity (securitization SPE) means a corporation, trust, or other entity organized for the specific purpose of holding underlying exposures of a securitization, the activities of which are limited to those appropriate to accomplish this purpose, and the structure of which is intended to isolate the underlying exposures held by the entity from the credit risk of the seller of the underlying exposures to the entity.

Senior securitization exposure means a securitization exposure that has a first priority claim on the cash flows from the underlying exposures. When determining whether a securitization exposure has a first priority claim on the cash flows from the underlying exposures, a [bank] is not required to consider amounts due under interest rate or currency derivative contracts, fees due, or other similar payments. Both the most senior commercial paper issued by an ABCP program and a liquidity facility that supports the ABCP program may be senior securitization exposures if the liquidity facility provider's right to reimbursement of the drawn amounts is senior to all claims on the cash flows from the underlying exposures except amounts due under interest rate or currency derivative contracts, fees due, or other similar payments.

Servicer cash advance facility means a facility under which the servicer of the underlying exposures of a securitization may advance cash to ensure an uninterrupted flow of payments to investors in the securitization, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the underlying exposures. See also *eligible servicer cash advance facility*.

Sovereign entity means a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government.

Sovereign exposure means:

(1) A direct exposure to a sovereign entity; or

(2) An exposure directly and unconditionally backed by the full faith and credit of a sovereign entity.

Subsidiary means, with respect to a company, a company controlled by that company.

Synthetic securitization means a transaction in which:

(1) All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties through the use of one or more credit derivatives or guarantees (other than a guarantee that transfers only the credit risk of an individual retail exposure);

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures; and

(4) All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities).

Tier 1 capital is defined in [the general risk-based capital rules], as modified in part II of this appendix.

Tier 2 capital is defined in [the general risk-based capital rules], as modified in part II of this appendix.

Total qualifying capital means the sum of tier 1 capital and tier 2 capital, after all deductions required in this appendix.

Total risk-weighted assets means:

(1) The sum of:

(i) Credit risk-weighted assets; and

(ii) Risk-weighted assets for operational risk; minus

(2) Excess eligible credit reserves not included in tier 2 capital.

Total wholesale and retail risk-weighted assets means the sum of risk-weighted assets for wholesale exposures to non-defaulted obligors and segments of non-defaulted retail exposures; risk-weighted assets for wholesale exposures to defaulted obligors and segments of defaulted retail exposures; risk-weighted assets for assets not defined by an exposure category; and risk-weighted assets for non-material portfolios of exposures (all as determined in section 31 of this appendix) and risk-weighted assets for unsettled transactions (as determined in section 35 of this appendix) minus the amounts deducted from capital pursuant to [the general risk-based capital rules] (excluding those deductions reversed in section 12 of this appendix).

Traditional securitization means a transaction in which:

(1) All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties other than through the use of credit derivatives or guarantees;

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures;

(4) All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities);

(5) The underlying exposures are not owned by an operating company;

(6) The underlying exposures are not owned by a small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682); and

(7) The underlying exposures are not owned by a firm an investment in which qualifies as a community development investment under 12 U.S.C. 24(Eleventh).

(8) The [AGENCY] may determine that a transaction in which the underlying exposures are owned by an investment firm that exercises substantially unfettered control over the size and composition of its assets, liabilities, and off-balance sheet exposures is not a traditional securitization based on the transaction's leverage, risk profile, or economic substance.

(9) The [AGENCY] may deem a transaction that meets the definition of a traditional securitization, notwithstanding paragraph (5), (6), or (7) of this definition, to be a traditional securitization based on the transaction's leverage, risk profile, or economic substance.

Tranche means all securitization exposures associated with a securitization that have the same seniority level.

Underlying exposures means one or more exposures that have been securitized in a securitization transaction.

Unexpected operational loss (UOL) means the difference between the [bank]'s operational risk exposure and the [bank]'s expected operational loss.

Unit of measure means the level (for example, organizational unit or operational loss event type) at which the [bank]'s operational risk quantification system generates a separate distribution of potential operational losses.

Value-at-Risk (VaR) means the estimate of the maximum amount that the value of one or more exposures could decline due to market price or rate movements during a fixed holding period within a stated confidence interval.

Wholesale exposure means a credit exposure to a company, natural person, sovereign entity, or governmental entity (other than a securitization exposure, retail exposure, excluded mortgage exposure, or equity exposure). Examples of a wholesale exposure include:

(1) A non-tranched guarantee issued by a [bank] on behalf of a company;

(2) A repo-style transaction entered into by a [bank] with a company and any other transaction in which a [bank] posts collateral to a company and faces counterparty credit risk;

(3) An exposure that a [bank] treats as a covered position under [the market risk rule] for which there is a counterparty credit risk capital requirement;

(4) A sale of corporate loans by a [bank] to a third party in which the [bank] retains full recourse;

(5) An OTC derivative contract entered into by a [bank] with a company;

(6) An exposure to an individual that is not managed by a [bank] as part of a segment of exposures with homogeneous risk characteristics; and

(7) A commercial lease.

Wholesale exposure subcategory means the HVCRE or non-HVCRE wholesale exposure subcategory.

Section 3. Minimum Risk-Based Capital Requirements

(a) Except as modified by paragraph (c) of this section or by section 23 of this appendix, each [bank] must meet a minimum ratio of:

(1) Total qualifying capital to total risk-weighted assets of 8.0 percent; and

(2) Tier 1 capital to total risk-weighted assets of 4.0 percent.

(b) Each [bank] must hold capital commensurate with the level and nature of all risks to which the [bank] is exposed.

(c) When a [bank] subject to [the market risk rule] calculates its risk-based capital requirements under this appendix, the [bank] must also refer to [the market risk rule] for supplemental rules to calculate risk-based capital requirements adjusted for market risk.

Part II. Qualifying Capital

Section 11. Additional Deductions

(a) *General.* A [bank] that uses this appendix must make the same deductions from its tier 1 capital and tier 2 capital required in [the general risk-based capital rules], except that:

(1) A [bank] is not required to deduct certain equity investments and CEIOs (as provided in section 12 of this appendix); and

(2) A [bank] also must make the deductions from capital required by paragraphs (b) and (c) of this section.

(b) *Deductions from tier 1 capital.* A [bank] must deduct from tier 1 capital any gain-on-sale associated with a securitization exposure as provided in paragraph (a) of section 41 and paragraphs (a)(1), (c), (g)(1), and (h)(1) of section 42 of this appendix.

(c) *Deductions from tier 1 and tier 2 capital.* A [bank] must deduct the exposures specified in paragraphs (c)(1) through (c)(7) in this section 50 percent from tier 1 capital and 50 percent from tier 2 capital. If the amount deductible from tier 2 capital exceeds the [bank]'s actual tier 2 capital, however, the [bank] must deduct the excess from tier 1 capital.

(1) *Credit-enhancing interest-only strips (CEIOs).* In accordance with paragraphs (a)(1) and (c) of section 42 of this appendix, any CEIO that does not constitute gain-on-sale.

(2) *Non-qualifying securitization exposures.* In accordance with paragraphs (a)(4) and (c) of section 42 of this appendix, any securitization exposure that does not qualify for the Ratings-Based Approach, the Internal Assessment Approach, or the Supervisory Formula Approach under sections 43, 44, and 45 of this appendix, respectively.

(3) *Securitizations of non-IRB exposures.* In accordance with paragraphs (c) and (g)(4) of section 42 of this appendix, certain exposures to a securitization any underlying exposure of which is not a wholesale exposure, retail exposure, securitization exposure, or equity exposure.

(4) *Low-rated securitization exposures.* In accordance with section 43 and paragraph (c) of section 42 of this appendix, any securitization exposure that qualifies for and must be deducted under the Ratings-Based Approach.

(5) *High-risk securitization exposures subject to the Supervisory Formula Approach.* In accordance with paragraphs (b) and (c) of section 45 of this appendix and paragraph (c) of section 42 of this appendix, certain high-risk securitization exposures (or portions thereof) that qualify for the Supervisory Formula Approach.

(6) *Eligible credit reserves shortfall.* In accordance with paragraph (a)(1) of section 13 of this appendix, any eligible credit reserves shortfall.

(7) *Certain failed capital markets transactions.* In accordance with paragraph (e)(3) of section 35 of this appendix, the [bank]'s exposure on certain failed capital markets transactions.

Section 12. Deductions and Limitations Not Required

(a) *Deduction of CEIOs.* A [bank] is not required to make the deductions from capital for CEIOs in 12 CFR part 3, Appendix A, section 2(c) (for national banks), 12 CFR part 208, Appendix A, section II.B.1.e. (for state member banks), 12 CFR part 225, Appendix A, section II.B.1.e. (for bank holding companies), 12 CFR part 325, Appendix A, section II.B.5. (for state nonmember banks), and 12 CFR 567.5(a)(2)(iii) and 567.12(e) (for savings associations).

(b) *Deduction of certain equity investments.* A [bank] is not required to make the deductions from capital for nonfinancial equity investments in 12 CFR part 3, Appendix A, section 2(c) (for national banks), 12 CFR part 208, Appendix A, section II.B.5. (for state member banks), 12 CFR part 225, Appendix A, section II.B.5. (for bank holding companies), and 12 CFR part 325, Appendix A, section II.B. (for state nonmember banks).

Section 13. Eligible Credit Reserves

(a) *Comparison of eligible credit reserves to expected credit losses*—(1) *Shortfall of* *eligible credit reserves.* If a [bank]'s eligible credit reserves are less than the [bank]'s total expected credit losses, the [bank] must deduct the shortfall amount 50 percent from tier 1 capital and 50 percent from tier 2 capital. If the amount deductible from tier 2 capital exceeds the [bank]'s actual tier 2 capital, the [bank] must deduct the excess amount from tier 1 capital.

(2) *Excess eligible credit reserves.* If a [bank]'s eligible credit reserves exceed the [bank]'s total expected credit losses, the [bank] may include the excess amount in tier 2 capital to the extent that the excess amount does not exceed 0.6 percent of the [bank]'s credit-risk-weighted assets.

(b) *Treatment of allowance for loan and lease losses.* Regardless of any provision in [the general risk-based capital rules], the ALLL is included in tier 2 capital only to the extent provided in paragraph (a)(2) of this section and in section 24 of this appendix.

Part III. Qualification

Section 21. Qualification Process

(a) *Timing.* (1) A [bank] that is described in paragraph (b)(1) of section 1 of this appendix must adopt a written implementation plan no later than six months after the later of April 1, 2008, or the date the [bank] meets a criterion in that section. The implementation plan must incorporate an explicit first floor period start date no later than 36 months after the later of April 1, 2008, or the date the [bank] meets at least one criterion under paragraph (b)(1) of section 1 of this appendix. The [AGENCY] may extend the first floor period start date.

(2) A [bank] that elects to be subject to this appendix under paragraph (b)(2) of section 1 of this appendix must adopt a written implementation plan.

(b) *Implementation plan.* (1) The [bank]'s implementation plan must address in detail how the [bank] complies, or plans to comply, with the qualification requirements in section 22 of this appendix. The [bank] also must maintain a comprehensive and sound planning and governance process to oversee the implementation efforts described in the plan. At a minimum, the plan must:

(i) Comprehensively address the qualification requirements in section 22 of this appendix for the [bank] and each consolidated subsidiary (U.S. and foreign-based) of the [bank] with respect to all portfolios and exposures of the [bank] and each of its consolidated subsidiaries;

(ii) Justify and support any proposed temporary or permanent exclusion of business lines, portfolios, or exposures from application of the advanced approaches in this appendix (which business lines, portfolios, and exposures must be, in the aggregate, immaterial to the [bank]);

(iii) Include the [bank]'s self-assessment of:

(A) The [bank]'s current status in meeting the qualification requirements in section 22 of this appendix; and

(B) The consistency of the [bank]'s current practices with the [AGENCY]'s supervisory guidance on the qualification requirements;

(iv) Based on the [bank]'s self-assessment, identify and describe the areas in which the [bank] proposes to undertake additional work to comply with the qualification requirements in section 22 of this appendix or to improve the consistency of the [bank]'s current practices with the [AGENCY]'s supervisory guidance on the qualification requirements (gap analysis);

(v) Describe what specific actions the [bank] will take to address the areas identified in the gap analysis required by paragraph (b)(1)(iv) of this section;

(vi) Identify objective, measurable milestones, including delivery dates and a date when the [bank]'s implementation of the methodologies described in this appendix will be fully operational;

(vii) Describe resources that have been budgeted and are available to implement the plan; and

(viii) Receive approval of the [bank]'s board of directors.

(2) The [bank] must submit the implementation plan, together with a copy of the minutes of the board of directors' approval, to the [AGENCY] at least 60 days before the [bank] proposes to begin its parallel run, unless the [AGENCY] waives prior notice.

(c) *Parallel run.* Before determining its risk-based capital requirements under this appendix and following adoption of the implementation plan, the [bank] must conduct a satisfactory parallel run. A satisfactory parallel run is a period of no less than four consecutive calendar quarters during which the [bank] complies with the qualification requirements in section 22 of this appendix to the satisfaction of the [AGENCY]. During the parallel run, the [bank] must report to the [AGENCY] on a calendar quarterly basis its risk-based capital ratios using [the general risk-based capital rules] and the risk-based capital requirements described in this appendix. During this period, the [bank] is subject to [the general risk-based capital rules].

(d) *Approval to calculate risk-based capital requirements under this appendix.* The [AGENCY] will notify the [bank] of the date that the [bank] may begin its first floor period if the [AGENCY] determines that:

(1) The [bank] fully complies with all the qualification requirements in section 22 of this appendix;

(2) The [bank] has conducted a satisfactory parallel run under paragraph (c) of this section; and

(3) The [bank] has an adequate process to ensure ongoing compliance with the qualification requirements in section 22 of this appendix.

(e) *Transitional floor periods.* Following a satisfactory parallel run, a [bank] is subject to three transitional floor periods.

(1) *Risk-based capital ratios during the transitional floor periods*—(i) *Tier 1 risk-based capital ratio.* During a [bank]'s transitional floor periods, the [bank]'s tier 1 risk-based capital ratio is equal to the lower of:

(A) The [bank]'s floor-adjusted tier 1 risk-based capital ratio; or

(B) The [bank]'s advanced approaches tier 1 risk-based capital ratio.

(ii) *Total risk-based capital ratio.* During a [bank]'s transitional floor periods, the [bank]'s total risk-based capital ratio is equal to the lower of:

(A) The [bank]'s floor-adjusted total risk-based capital ratio; or

(B) The [bank]'s advanced approaches total risk-based capital ratio.

(2) *Floor-adjusted risk-based capital ratios.* (i) A [bank]'s floor-adjusted tier 1 risk-based capital ratio during a transitional floor period is equal to the [bank]'s tier 1 capital as calculated under [the general risk-based capital rules], divided by the product of:

(A) The [bank]'s total risk-weighted assets as calculated under [the general risk-based capital rules]; and

(B) The appropriate transitional floor percentage in Table 1.

(ii) A [bank]'s floor-adjusted total risk-based capital ratio during a transitional floor period is equal to the sum of the [bank]'s tier 1 and tier 2 capital as calculated under [the general risk-based capital rules], divided by the product of:

(A) The [bank]'s total risk-weighted assets as calculated under [the general risk-based capital rules]; and

(B) The appropriate transitional floor percentage in Table 1.

(iii) A [bank] that meets the criteria in paragraph (b)(1) or (b)(2) of section 1 of this appendix as of April 1, 2008, must use [the general risk-based capital rules] during the parallel run and as the basis for its transitional floors.

TABLE 1.—TRANSITIONAL FLOORS

Transitional floor period	Transitional floor percentage
First floor period	95 percent.
Second floor period	90 percent.
Third floor period	85 percent.

(3) *Advanced approaches risk-based capital ratios.* (i) A [bank]'s advanced approaches tier 1 risk-based capital ratio equals the [bank]'s tier 1 risk-based capital ratio as calculated under this appendix (other than this section on transitional floor periods).

(ii) A [bank]'s advanced approaches total risk-based capital ratio equals the [bank]'s total risk-based capital ratio as calculated under this appendix (other than this section on transitional floor periods).

(4) *Reporting.* During the transitional floor periods, a [bank] must report to the [AGENCY] on a calendar quarterly basis both floor-adjusted risk-based capital ratios and both advanced approaches risk-based capital ratios.

(5) *Exiting a transitional floor period.* A [bank] may not exit a transitional floor period until the [bank] has spent a minimum of four consecutive calendar quarters in the period and the [AGENCY] has determined that the [bank] may exit the floor period. The [AGENCY]'s determination will be based on an assessment of the [bank]'s ongoing compliance with the qualification requirements in section 22 of this appendix.

(6) *Interagency study.* After the end of the second transition year (2010), the Federal banking agencies will publish a study that evaluates the advanced approaches to determine if there are any material deficiencies. For any primary Federal

supervisor to authorize any institution to exit the third transitional floor period, the study must determine that there are no such material deficiencies that cannot be addressed by then-existing tools, or, if such deficiencies are found, they are first remedied by changes to this appendix. Notwithstanding the preceding sentence, a primary Federal supervisor that disagrees with the finding of material deficiency may not authorize any institution under its jurisdiction to exit the third transitional floor period unless it provides a public report explaining its reasoning.

Section 22. Qualification Requirements

(a) *Process and systems requirements.* (1) A [bank] must have a rigorous process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital.

(2) The systems and processes used by a [bank] for risk-based capital purposes under this appendix must be consistent with the [bank]'s internal risk management processes and management information reporting systems.

(3) Each [bank] must have an appropriate infrastructure with risk measurement and management processes that meet the qualification requirements of this section and are appropriate given the [bank]'s size and level of complexity. Regardless of whether the systems and models that generate the risk parameters necessary for calculating a [bank]'s risk-based capital requirements are located at any affiliate of the [bank], the [bank] itself must ensure that the risk parameters and reference data used to determine its risk-based capital requirements are representative of its own credit risk and operational risk exposures.

(b) *Risk rating and segmentation systems for wholesale and retail exposures.* (1) A [bank] must have an internal risk rating and segmentation system that accurately and reliably differentiates among degrees of credit risk for the [bank]'s wholesale and retail exposures.

(2) For wholesale exposures:

(i) A [bank] must have an internal risk rating system that accurately and reliably assigns each obligor to a single rating grade (reflecting the obligor's likelihood of default). A [bank] may elect, however, not to assign to a rating grade an obligor to whom the [bank] extends credit based solely on the financial strength of a guarantor, provided that all of the [bank]'s exposures to the obligor are fully covered by eligible guarantees, the [bank] applies the PD substitution approach in paragraph (c)(1) of section 33 of this appendix to all exposures to that obligor, and the [bank] immediately assigns the obligor to a rating grade if a guarantee can no longer be recognized under this appendix. The [bank]'s wholesale obligor rating system must have at least seven discrete rating grades for non-defaulted obligors and at least one rating grade for defaulted obligors.

(ii) Unless the [bank] has chosen to directly assign LGD estimates to each wholesale exposure, the [bank] must have an internal risk rating system that accurately and reliably assigns each wholesale exposure to a loss severity rating grade (reflecting the [bank]'s estimate of the LGD of the exposure). A [bank] employing loss severity rating grades must have a sufficiently granular loss severity grading system to avoid grouping together exposures with widely ranging LGDs.

(3) For retail exposures, a [bank] must have an internal system that groups retail exposures into the appropriate retail exposure subcategory, groups the retail exposures in each retail exposure subcategory into separate segments with homogeneous risk characteristics, and assigns accurate and reliable PD and LGD estimates for each segment on a consistent basis. The [bank]'s system must identify and group in separate segments by subcategories exposures identified in paragraphs (c)(2)(ii) and (iii) of section 31 of this appendix.

(4) The [bank]'s internal risk rating policy for wholesale exposures must describe the [bank]'s rating philosophy (that is, must describe how wholesale obligor rating assignments are affected by the [bank]'s choice of the range of economic, business, and industry conditions that are considered in the obligor rating process).

(5) The [bank]'s internal risk rating system for wholesale exposures must provide for the review and update (as appropriate) of each obligor rating and (if applicable) each loss severity rating whenever the [bank] receives new material information, but no less frequently than annually. The [bank]'s retail exposure segmentation system must provide for the review and update (as appropriate) of assignments of retail exposures to segments whenever the [bank] receives new material information, but generally no less frequently than quarterly.

(c) *Quantification of risk parameters for wholesale and retail exposures.* (1) The [bank] must have a comprehensive risk parameter quantification process that produces accurate, timely, and reliable estimates of the risk parameters for the [bank]'s wholesale and retail exposures.

(2) Data used to estimate the risk parameters must be relevant to the [bank]'s actual wholesale and retail exposures, and of sufficient quality to support the determination of risk-based capital requirements for the exposures.

(3) The [bank]'s risk parameter quantification process must produce appropriately conservative risk parameter estimates where the [bank] has limited relevant data, and any adjustments that are part of the quantification process must not result in a pattern of bias toward lower risk parameter estimates.

(4) The [bank]'s risk parameter estimation process should not rely on the possibility of U.S. government financial assistance, except for the financial assistance that the U.S. government has a legally binding commitment to provide.

(5) Where the [bank]'s quantifications of LGD directly or indirectly incorporate estimates of the effectiveness of its credit risk management practices in reducing its exposure to troubled obligors prior to default, the [bank] must support such estimates with empirical analysis showing that the estimates are consistent with its historical experience in dealing with such exposures during economic downturn conditions.

(6) PD estimates for wholesale obligors and retail segments must be based on at least five years of default data. LGD estimates for wholesale exposures must be based on at least seven years of loss severity data, and LGD estimates for retail segments must be based on at least five years of loss severity data. EAD estimates for wholesale exposures must be based on at least seven years of exposure amount data, and EAD estimates for retail segments must be based on at least five years of exposure amount data.

(7) Default, loss severity, and exposure amount data must include periods of economic downturn conditions, or the [bank] must adjust its estimates of risk parameters to compensate for the lack of data from periods of economic downturn conditions.

(8) The [bank]'s PD, LGD, and EAD estimates must be based on the definition of default in this appendix.

(9) The [bank] must review and update (as appropriate) its risk parameters and its risk parameter quantification process at least annually.

(10) The [bank] must at least annually conduct a comprehensive review and analysis of reference data to determine relevance of reference data to the [bank]'s exposures, quality of reference data to support PD, LGD, and EAD estimates, and consistency of reference data to the definition of default contained in this appendix.

(d) *Counterparty credit risk model.* A [bank] must obtain the prior written approval of the [AGENCY] under section 32 of this appendix to use the internal models methodology for counterparty credit risk.

(e) *Double default treatment.* A [bank] must obtain the prior written approval of the [AGENCY] under section 34 of this appendix to use the double default treatment.

(f) *Securitization exposures.* A [bank] must obtain the prior written approval of the [AGENCY] under section 44 of this appendix to use the Internal Assessment Approach for securitization exposures to ABCP programs.

(g) *Equity exposures model.* A [bank] must obtain the prior written approval of the [AGENCY] under section 53 of this appendix to use the Internal Models Approach for equity exposures.

(h) *Operational risk*—(1) *Operational risk management processes.* A [bank] must:

(i) Have an operational risk management function that:

(A) Is independent of business line management; and

(B) Is responsible for designing, implementing, and overseeing the [bank]'s operational risk data and assessment systems, operational risk quantification systems, and related processes;

(ii) Have and document a process (which must capture business environment and internal control factors affecting the [bank]'s operational risk profile) to identify, measure, monitor, and control operational risk in [bank] products, activities, processes, and systems; and

(iii) Report operational risk exposures, operational loss events, and other relevant operational risk information to business unit management, senior management, and the board of directors (or a designated committee of the board).

(2) *Operational risk data and assessment systems.* A [bank] must have operational risk data and assessment systems that capture operational risks to which the [bank] is exposed. The [bank]'s operational risk data and assessment systems must:

(i) Be structured in a manner consistent with the [bank]'s current business activities, risk profile, technological processes, and risk management processes; and

(ii) Include credible, transparent, systematic, and verifiable processes that incorporate the following elements on an ongoing basis:

(A) *Internal operational loss event data.* The [bank] must have a systematic process for capturing and using internal operational loss event data in its operational risk data and assessment systems.

(*1*) The [bank]'s operational risk data and assessment systems must include a historical observation period of at least five years for internal operational loss event data (or such shorter period approved by the [AGENCY] to address transitional situations, such as integrating a new business line).

(*2*) The [bank] must be able to map its internal operational loss event data into the seven operational loss event type categories.

(*3*) The [bank] may refrain from collecting internal operational loss event data for individual operational losses below established dollar threshold amounts if the [bank] can demonstrate to the satisfaction of the [AGENCY] that the thresholds are reasonable, do not exclude important internal operational loss event data, and permit the [bank] to capture substantially all the dollar value of the [bank]'s operational losses.

(B) *External operational loss event data.* The [bank] must have a systematic process for determining its methodologies for incorporating external operational loss event data into its operational risk data and assessment systems.

(C) *Scenario analysis.* The [bank] must have a systematic process for determining its methodologies for incorporating scenario analysis into its operational risk data and assessment systems.

(D) *Business environment and internal control factors.* The [bank] must incorporate business environment and internal control factors into its operational risk data and assessment systems. The [bank] must also periodically compare the results of its prior business environment and internal control factor assessments against its actual operational losses incurred in the intervening period.

(3) *Operational risk quantification systems.* (i) The [bank]'s operational risk quantification systems:

(A) Must generate estimates of the [bank]'s operational risk exposure using its operational risk data and assessment systems;

(B) Must employ a unit of measure that is appropriate for the [bank]'s range of business activities and the variety of operational loss events to which it is exposed, and that does not combine business activities or operational loss events with demonstrably different risk profiles within the same loss distribution;

(C) Must include a credible, transparent, systematic, and verifiable approach for weighting each of the four elements, described in paragraph (h)(2)(ii) of this section, that a [bank] is required to incorporate into its operational risk data and assessment systems;

(D) May use internal estimates of dependence among operational losses across and within units of measure if the [bank] can demonstrate to the satisfaction of the [AGENCY] that its process for estimating dependence is sound, robust to a variety of scenarios, and implemented with integrity, and allows for the uncertainty surrounding the estimates. If the [bank] has not made such a demonstration, it must sum operational risk exposure estimates across units of measure to calculate its total operational risk exposure; and

(E) Must be reviewed and updated (as appropriate) whenever the [bank] becomes aware of information that may have a material effect on the [bank]'s estimate of operational risk exposure, but the review and update must occur no less frequently than annually.

(ii) With the prior written approval of the [AGENCY], a [bank] may generate an estimate of its operational risk exposure using an alternative approach to that specified in paragraph (h)(3)(i) of this section. A [bank] proposing to use such an alternative operational risk quantification system must submit a proposal to the [AGENCY]. In determining whether to approve a [bank]'s proposal to use an alternative operational risk quantification system, the [AGENCY] will consider the following principles:

(A) Use of the alternative operational risk quantification system will be allowed only on an exception basis, considering the size, complexity, and risk profile of the [bank];

(B) The [bank] must demonstrate that its estimate of its operational risk exposure generated under the alternative operational risk quantification system is appropriate and can be supported empirically; and

(C) A [bank] must not use an allocation of operational risk capital requirements that includes entities other than depository institutions or the benefits of diversification across entities.

(i) *Data management and maintenance.* (1) A [bank] must have data management and maintenance systems that adequately support all aspects of its advanced systems and the timely and accurate reporting of risk-based capital requirements.

(2) A [bank] must retain data using an electronic format that allows timely retrieval of data for analysis, validation, reporting, and disclosure purposes.

(3) A [bank] must retain sufficient data elements related to key risk drivers to permit adequate monitoring, validation, and refinement of its advanced systems.

(j) *Control, oversight, and validation mechanisms.* (1) The [bank]'s senior management must ensure that all components of the [bank]'s advanced systems function effectively and comply with the qualification requirements in this section.

(2) The [bank]'s board of directors (or a designated committee of the board) must at least annually review the effectiveness of, and approve, the [bank]'s advanced systems.

(3) A [bank] must have an effective system of controls and oversight that:

(i) Ensures ongoing compliance with the qualification requirements in this section;

(ii) Maintains the integrity, reliability, and accuracy of the [bank]'s advanced systems; and

(iii) Includes adequate governance and project management processes.

(4) The [bank] must validate, on an ongoing basis, its advanced systems. The [bank]'s validation process must be independent of the advanced systems' development, implementation, and operation, or the validation process must be subjected to an independent review of its adequacy and effectiveness. Validation must include:

(i) An evaluation of the conceptual soundness of (including developmental evidence supporting) the advanced systems;

(ii) An ongoing monitoring process that includes verification of processes and benchmarking; and

(iii) An outcomes analysis process that includes back-testing.

(5) The [bank] must have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the [bank]'s advanced systems and reports its findings to the [bank]'s board of directors (or a committee thereof).

(6) The [bank] must periodically stress test its advanced systems. The stress testing must include a consideration of how economic cycles, especially downturns, affect risk-based capital requirements (including migration across rating grades and segments and the credit risk mitigation benefits of double default treatment).

(k) *Documentation.* The [bank] must adequately document all material aspects of its advanced systems.

Section 23. Ongoing Qualification

(a) *Changes to advanced systems.* A [bank] must meet all the qualification requirements in section 22 of this appendix on an ongoing basis. A [bank] must notify the [AGENCY] when the [bank] makes any change to an advanced system that would result in a material change in the [bank]'s risk-weighted asset amount for an exposure type, or when the [bank] makes any significant change to its modeling assumptions.

(b) *Failure to comply with qualification requirements.* (1) If the [AGENCY] determines that a [bank] that uses this appendix and has conducted a satisfactory parallel run fails to comply with the qualification requirements in section 22 of this appendix, the [AGENCY] will notify the [bank] in writing of the [bank]'s failure to comply.

(2) The [bank] must establish and submit a plan satisfactory to the [AGENCY] to return to compliance with the qualification requirements.

(3) In addition, if the [AGENCY] determines that the [bank]'s risk-based capital requirements are not commensurate with the [bank]'s credit, market, operational, or other risks, the [AGENCY] may require such a [bank] to calculate its risk-based capital requirements:

(i) Under [the general risk-based capital rules]; or

(ii) Under this appendix with any modifications provided by the [AGENCY].

Section 24. Merger and Acquisition Transitional Arrangements

(a) *Mergers and acquisitions of companies without advanced systems.* If a [bank] merges with or acquires a company that does not calculate its risk-based capital requirements using advanced systems, the [bank] may use [the general risk-based capital rules] to determine the risk-weighted asset amounts for, and deductions from capital associated with, the merged or acquired company's exposures for up to 24 months after the calendar quarter during which the merger or acquisition consummates. The [AGENCY] may extend this transition period for up to an additional 12 months. Within 90 days of consummating the merger or acquisition, the [bank] must submit to the [AGENCY] an implementation plan for using its advanced systems for the acquired company. During the period when [the general risk-based capital rules] apply to the merged or acquired company, any ALLL, net of allocated transfer risk reserves established pursuant to 12 U.S.C. 3904, associated with the merged or acquired company's exposures may be included in the acquiring [bank]'s tier 2 capital up to 1.25 percent of the acquired company's risk-weighted assets. All general allowances of the merged or acquired company must be excluded from the [bank]'s eligible credit reserves. In addition, the risk-weighted assets of the merged or acquired company are not included in the [bank]'s credit-risk-weighted assets but are included in total risk-weighted assets. If a [bank] relies on this paragraph, the [bank] must disclose publicly the amounts of risk-weighted assets and qualifying capital calculated under this appendix for the acquiring [bank] and under [the general risk-based capital rules] for the acquired company.

(b) *Mergers and acquisitions of companies with advanced systems*—(1) If a [bank] merges with or acquires a company that calculates its risk-based capital requirements using advanced systems, the [bank] may use the acquired company's advanced systems to determine the risk-weighted asset amounts for, and deductions from capital associated with, the merged or acquired company's exposures for up to 24 months after the calendar quarter during which the acquisition or merger consummates. The [AGENCY] may extend this transition period for up to an additional 12 months. Within 90 days of consummating the merger or acquisition, the [bank] must submit to the [AGENCY] an implementation plan for using its advanced systems for the merged or acquired company.

(2) If the acquiring [bank] is not subject to the advanced approaches in this appendix at the time of acquisition or merger, during the period when [the general risk-based capital rules] apply to the acquiring [bank], the ALLL associated with the exposures of the merged or acquired company may not be directly included in tier 2 capital. Rather, any excess eligible credit reserves associated with the merged or acquired company's exposures may be included in the [bank]'s tier 2 capital up to 0.6 percent of the credit-risk-weighted assets associated with those exposures.

Part IV. Risk-Weighted Assets for General Credit Risk

Section 31. Mechanics for Calculating Total Wholesale and Retail Risk-Weighted Assets

(a) *Overview.* A [bank] must calculate its total wholesale and retail risk-weighted asset amount in four distinct phases:

(1) Phase 1—categorization of exposures;

(2) Phase 2—assignment of wholesale obligors and exposures to rating grades and segmentation of retail exposures;

(3) Phase 3—assignment of risk parameters to wholesale exposures and segments of retail exposures; and

(4) Phase 4—calculation of risk-weighted asset amounts.

(b) *Phase 1—Categorization.* The [bank] must determine which of its exposures are wholesale exposures, retail exposures, securitization exposures, or equity exposures. The [bank] must categorize each retail exposure as a residential mortgage exposure, a QRE, or an other retail exposure. The [bank] must identify which wholesale exposures are HVCRE exposures, sovereign exposures, OTC derivative contracts, repo-style transactions, eligible margin loans, eligible purchased wholesale exposures, unsettled transactions to which section 35 of this appendix applies, and eligible guarantees or eligible credit derivatives that are used as credit risk mitigants. The [bank] must identify any on-balance sheet asset that does not meet the definition of a wholesale, retail, equity, or securitization exposure, as well as any non-material portfolio of exposures described in paragraph (e)(4) of this section.

(c) *Phase 2—Assignment of wholesale obligors and exposures to rating grades and retail exposures to segments—(1) Assignment of wholesale obligors and exposures to rating grades.*

(i) The [bank] must assign each obligor of a wholesale exposure to a single obligor rating grade and must assign each wholesale exposure to which it does not directly assign an LGD estimate to a loss severity rating grade.

(ii) The [bank] must identify which of its wholesale obligors are in default.

(2) *Segmentation of retail exposures.* (i) The [bank] must group the retail exposures in each retail subcategory into segments that have homogeneous risk characteristics.

(ii) The [bank] must identify which of its retail exposures are in default. The [bank] must segment defaulted retail exposures separately from non-defaulted retail exposures.

(iii) If the [bank] determines the EAD for eligible margin loans using the approach in paragraph (b) of section 32 of this appendix, the [bank] must identify which of its retail exposures are eligible margin loans for which the [bank] uses this EAD approach and must segment such eligible margin loans separately from other retail exposures.

(3) *Eligible purchased wholesale exposures.* A [bank] may group its eligible purchased wholesale exposures into segments that have homogeneous risk characteristics. A [bank] must use the wholesale exposure formula in Table 2 in this section to determine the risk-based capital requirement for each segment of eligible purchased wholesale exposures.

(d) *Phase 3—Assignment of risk parameters to wholesale exposures and segments of retail exposures*—(1) *Quantification process.* Subject to the limitations in this paragraph (d), the [bank] must:

(i) Associate a PD with each wholesale obligor rating grade;

(ii) Associate an LGD with each wholesale loss severity rating grade or assign an LGD to each wholesale exposure;

(iii) Assign an EAD and M to each wholesale exposure; and

(iv) Assign a PD, LGD, and EAD to each segment of retail exposures.

(2) *Floor on PD assignment.* The PD for each wholesale obligor or retail segment may not be less than 0.03 percent, except for exposures to or directly and unconditionally guaranteed by a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Commission, the European Central Bank, or a multilateral development bank, to which the [bank] assigns a rating grade associated with a PD of less than 0.03 percent.

(3) *Floor on LGD estimation.* The LGD for each segment of residential mortgage exposures (other than segments of residential mortgage exposures for which all or substantially all of the principal of each exposure is directly and unconditionally guaranteed by the full faith and credit of a sovereign entity) may not be less than 10 percent.

(4) *Eligible purchased wholesale exposures.* A [bank] must assign a PD, LGD, EAD, and M to each segment of eligible purchased wholesale exposures. If the [bank] can estimate ECL (but not PD or LGD) for a segment of eligible purchased wholesale exposures, the [bank] must assume that the LGD of the segment equals 100 percent and that the PD of the segment equals ECL divided by EAD. The estimated ECL must be calculated for the exposures without regard to any assumption of recourse or guarantees from the seller or other parties.

(5) *Credit risk mitigation—credit derivatives, guarantees, and collateral.* (i) A [bank] may take into account the risk reducing effects of eligible guarantees and eligible credit derivatives in support of a wholesale exposure by applying the PD substitution or LGD adjustment treatment to the exposure as provided in section 33 of this appendix or, if applicable, applying double default treatment to the exposure as provided in section 34 of this appendix. A [bank] may decide separately for each wholesale exposure that qualifies for the double default treatment under section 34 of this appendix whether to apply the double default treatment or to use the PD substitution or LGD adjustment treatment without recognizing double default effects.

(ii) A [bank] may take into account the risk reducing effects of guarantees and credit derivatives in support of retail exposures in a segment when quantifying the PD and LGD of the segment.

(iii) Except as provided in paragraph (d)(6) of this section, a [bank] may take into account the risk reducing effects of collateral in support of a wholesale exposure when quantifying the LGD of the exposure and may take into account the risk reducing effects of collateral in support of retail exposures when quantifying the PD and LGD of the segment.

(6) *EAD for OTC derivative contracts, repo-style transactions, and eligible margin loans.* (i) A [bank] must calculate its EAD for an OTC derivative contract as provided in paragraphs (c) and (d) of section 32 of this appendix. A [bank] may take into account the risk-reducing effects of financial collateral in support of a repo-style transaction or eligible margin loan and of any collateral in support of a repo-style transaction that is included in the [bank]'s VaR-based measure under [the market risk rule] through an adjustment to EAD as provided in paragraphs (b) and (d) of section 32 of this appendix. A [bank] that takes collateral into account through such an adjustment to EAD under section 32 of this appendix may not reflect such collateral in LGD.

(ii) A [bank] may attribute an EAD of zero to:

(A) Derivative contracts that are publicly traded on an exchange that requires the daily receipt and payment of cash-variation margin;

(B) Derivative contracts and repo-style transactions that are outstanding with a qualifying central counterparty (but not for those transactions that a qualifying central counterparty has rejected); and

(C) Credit risk exposures to a qualifying central counterparty in the form of clearing deposits and posted collateral that arise from transactions described in paragraph (d)(6)(ii)(B) of this section.

(7) *Effective maturity.* An exposure's M must be no greater than five years and no less than one year, except that an exposure's M must be no less than one day if the exposure has an original maturity of less than one year and is not part of a [bank]'s ongoing financing of the obligor. An exposure is not part of a [bank]'s ongoing financing of the obligor if the [bank]:

(i) Has a legal and practical ability not to renew or roll over the exposure in the event of credit deterioration of the obligor;

(ii) Makes an independent credit decision at the inception of the exposure and at every renewal or roll over; and

(iii) Has no substantial commercial incentive to continue its credit relationship with the obligor in the event of credit deterioration of the obligor.

(e) *Phase 4—Calculation of risk-weighted assets*—(1) *Non-defaulted exposures.* (i) A [bank] must calculate the dollar risk-based capital requirement for each of its wholesale exposures to a non-defaulted obligor (except eligible guarantees and eligible credit derivatives that hedge another wholesale exposure and exposures to which the [bank] applies the double default treatment in section 34 of this appendix) and segments of non-defaulted retail exposures by inserting the assigned risk parameters for the wholesale obligor and exposure or retail segment into the appropriate risk-based capital formula specified in Table 2 and multiplying the output of the formula (K) by the EAD of the exposure or segment. Alternatively, a [bank] may apply a 300 percent risk weight to the EAD of an eligible margin loan if the [bank] is not able to meet the agencies'' requirements for estimation of PD and LGD for the margin loan.

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

Table 2 – IRB Risk-Based Capital Formulas for Wholesale Exposures to Non-Defaulted Obligors and Segments of Non-Defaulted Retail Exposures[1]

Retail	**Capital Requirement (K) Non-Defaulted Exposures**	$K = \left[LGD \times N\left(\frac{N^{-1}(PD) + \sqrt{R} \times N^{-1}(0.999)}{\sqrt{1-R}} \right) - (LGD \times PD) \right]$
	Correlation Factor (R)	For residential mortgage exposures: $R = 0.15$
		For qualifying revolving exposures: $R = 0.04$
		For other retail exposures: $R = 0.03 + 0.13 \times e^{-35 \times PD}$
Wholesale	**Capital Requirement (K) Non-Defaulted Exposures**	$K = \left[LGD \times N\left(\frac{N^{-1}(PD) + \sqrt{R} \times N^{-1}(0.999)}{\sqrt{1-R}} \right) - (LGD \times PD) \right] \times \left(\frac{1 + (M - 2.5) \times b}{1 - 1.5 \times b} \right)$
	Correlation Factor (R)	For HVCRE exposures: $R = 0.12 + 0.18 \times e^{-50 \times PD}$
		For wholesale exposures other than HVCRE exposures: $R = 0.12 + 0.12 \times e^{-50 \times PD}$
	Maturity Adjustment (b)	$b = (0.11852 - 0.05478 \times \ln(PD))^2$

[1]N(.) means the cumulative distribution function for a standard normal random variable. N^{-1}(.) means the inverse cumulative distribution function for a standard normal random variable. The symbol e refers to the base of the natural logarithms, and the function ln(.) refers to the natural logarithm of the expression within parentheses. The formulas apply when PD is greater than zero. If PD equals zero, the capital requirement K is set equal to zero.

BILLING CODE 4810–33–C; 6210–01–C; 6714–01–C; 6720–01–C

(ii) The sum of all the dollar risk-based capital requirements for each wholesale exposure to a non-defaulted obligor and segment of non-defaulted retail exposures calculated in paragraph (e)(1)(i) of this section and in paragraph (e) of section 34 of this appendix equals the total dollar risk-based capital requirement for those exposures and segments.

(iii) The aggregate risk-weighted asset amount for wholesale exposures to non-defaulted obligors and segments of non-defaulted retail exposures equals the total dollar risk-based capital requirement calculated in paragraph (e)(1)(ii) of this section multiplied by 12.5.

(2) *Wholesale exposures to defaulted obligors and segments of defaulted retail exposures.* (i) The dollar risk-based capital requirement for each wholesale exposure to a defaulted obligor equals 0.08 multiplied by the EAD of the exposure.

(ii) The dollar risk-based capital requirement for a segment of defaulted retail exposures equals 0.08 multiplied by the EAD of the segment.

(iii) The sum of all the dollar risk-based capital requirements for each wholesale exposure to a defaulted obligor calculated in paragraph (e)(2)(i) of this section plus the dollar risk-based capital requirements for each segment of defaulted retail exposures calculated in paragraph (e)(2)(ii) of this section equals the total dollar risk-based capital requirement for those exposures and segments.

(iv) The aggregate risk-weighted asset amount for wholesale exposures to defaulted obligors and segments of defaulted retail exposures equals the total dollar risk-based capital requirement calculated in paragraph (e)(2)(iii) of this section multiplied by 12.5.

(3) *Assets not included in a defined exposure category.* (i) A [bank] may assign a risk-weighted asset amount of zero to cash owned and held in all offices of the [bank] or in transit and for gold bullion held in the [bank]'s own vaults, or held in another [bank]'s vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities.

(ii) The risk-weighted asset amount for the residual value of a retail lease exposure equals such residual value.

(iii) The risk-weighted asset amount for any other on-balance-sheet asset that does not meet the definition of a wholesale, retail, securitization, or equity exposure equals the carrying value of the asset.

(4) *Non-material portfolios of exposures.* The risk-weighted asset amount of a portfolio of exposures for which the [bank] has demonstrated to the [AGENCY]'s satisfaction that the portfolio (when combined with all other portfolios of exposures that the [bank] seeks to treat under this paragraph) is not material to the [bank] is the sum of the carrying values of on-balance sheet exposures plus the notional amounts of off-balance sheet exposures in the portfolio. For purposes of this paragraph (e)(4), the notional amount of an OTC derivative contract that is not a credit derivative is the EAD of the derivative as calculated in section 32 of this appendix.

Section 32. Counterparty Credit Risk of Repo-Style Transactions, Eligible Margin Loans, and OTC Derivative Contracts

(a) *In General.* (1) This section describes two methodologies—a collateral haircut approach and an internal models methodology—that a [bank] may use instead of an LGD estimation methodology to recognize the benefits of financial collateral in mitigating the counterparty credit risk of repo-style transactions, eligible margin loans, collateralized OTC derivative contracts, and single product netting sets of such transactions and to recognize the benefits of any collateral in mitigating the counterparty credit risk of repo-style transactions that are included in a [bank]'s VaR-based measure under [the market risk rule]. A third methodology, the simple VaR methodology, is available for single product netting sets of repo-style transactions and eligible margin loans.

(2) This section also describes the methodology for calculating EAD for an OTC derivative contract or a set of OTC derivative contracts subject to a qualifying master netting agreement. A [bank] also may use the internal models methodology to estimate EAD for qualifying cross-product master netting agreements.

(3) A [bank] may only use the standard supervisory haircut approach with a minimum 10-business-day holding period to recognize in EAD the benefits of conforming residential mortgage collateral that secures repo-style transactions (other than repo-style transactions included in the [bank]'s VaR-based measure under [the market risk rule]), eligible margin loans, and OTC derivative contracts.

(4) A [bank] may use any combination of the three methodologies for collateral recognition; however, it must use the same methodology for similar exposures.

(b) *EAD for eligible margin loans and repo-style transactions*—(1) *General.* A [bank] may recognize the credit risk mitigation benefits of financial collateral that secures an eligible margin loan, repo-style transaction, or single-product netting set of such transactions by factoring the collateral into its LGD estimates for the exposure. Alternatively, a [bank] may estimate an unsecured LGD for the exposure, as well as for any repo-style transaction that is included in the [bank]'s VaR-based measure under [the market risk rule], and determine the EAD of the exposure using:

(i) The collateral haircut approach described in paragraph (b)(2) of this section;

(ii) For netting sets only, the simple VaR methodology described in paragraph (b)(3) of this section; or

(iii) The internal models methodology described in paragraph (d) of this section.

(2) *Collateral haircut approach*—(i) *EAD equation.* A [bank] may determine EAD for an eligible margin loan, repo-style transaction, or netting set by setting EAD equal to max $\{0, [(\Sigma E - \Sigma C) + \Sigma(Es \times Hs) + \Sigma(Efx \times Hfx)]\}$, where:

(A) ΣE equals the value of the exposure (the sum of the current market values of all instruments, gold, and cash the [bank] has lent, sold subject to repurchase, or posted as collateral to the counterparty under the transaction (or netting set));

(B) ΣC equals the value of the collateral (the sum of the current market values of all instruments, gold, and cash the [bank] has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction (or netting set));

(C) Es equals the absolute value of the net position in a given instrument or in gold (where the net position in a given instrument or in gold equals the sum of the current market values of the instrument or gold the [bank] has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current market values of that same instrument or gold the [bank] has borrowed, purchased subject to resale, or taken as collateral from the counterparty);

(D) Hs equals the market price volatility haircut appropriate to the instrument or gold referenced in Es;

(E) Efx equals the absolute value of the net position of instruments and cash in a currency that is different from the settlement currency (where the net position in a given currency equals the sum of the current market values of any instruments or cash in the currency the [bank] has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current market values of any instruments or cash in the currency the [bank] has borrowed, purchased subject to resale, or taken as collateral from the counterparty); and

(F) Hfx equals the haircut appropriate to the mismatch between the currency referenced in Efx and the settlement currency.

(ii) *Standard supervisory haircuts.* (A) Under the standard supervisory haircuts approach:

(*1*) A [bank] must use the haircuts for market price volatility (Hs) in Table 3, as adjusted in certain circumstances as provided in paragraph (b)(2)(ii)(A)(*3*) and (*4*) of this section;

TABLE 3.—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS [1]

Applicable external rating grade category for debt securities	Residual maturity for debt securities	Issuers exempt from the 3 basis point floor	Other issuers
Two highest investment-grade rating categories for long-term ratings/highest investment-grade rating category for short-term ratings.	≤ 1 year	0.005	0.01
	>1 year, ≤ 5 years	0.02	0.04
	> 5 years	0.04	0.08
Two lowest investment-grade rating categories for both short- and long-term ratings.	≤ 1 year	0.01	0.02
	> 1 year, ≤ 5 years	0.03	0.06
	> 5 years	0.06	0.12
One rating category below investment grade	All	0.15	0.25
Main index equities (including convertible bonds) and gold		0.15	
Other publicly traded equities (including convertible bonds), conforming residential mortgages, and nonfinancial collateral.		0.25	

TABLE 3.—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS [1]—Continued

Applicable external rating grade category for debt securities	Residual maturity for debt securities	Issuers exempt from the 3 basis point floor	Other issuers
Mutual funds		Highest haircut applicable to any security in which the fund can invest.	
Cash on deposit with the [bank] (including a certificate of deposit issued by the [bank])		0	

[1] The market price volatility haircuts in Table 3 are based on a ten-business-day holding period.

(*2*) For currency mismatches, a [bank] must use a haircut for foreign exchange rate volatility (Hfx) of 8 percent, as adjusted in certain circumstances as provided in paragraph (b)(2)(ii)(A)(*3*) and (*4*) of this section.

(*3*) For repo-style transactions, a [bank] may multiply the supervisory haircuts provided in paragraphs (b)(2)(ii)(A)(*1*) and (*2*) of this section by the square root of ½ (which equals 0.707107).

(*4*) A [bank] must adjust the supervisory haircuts upward on the basis of a holding period longer than ten business days (for eligible margin loans) or five business days (for repo-style transactions) where and as appropriate to take into account the illiquidity of an instrument.

(iii) *Own internal estimates for haircuts*. With the prior written approval of the [AGENCY], a [bank] may calculate haircuts (Hs and Hfx) using its own internal estimates of the volatilities of market prices and foreign exchange rates.

(A) To receive [AGENCY] approval to use its own internal estimates, a [bank] must satisfy the following minimum quantitative standards:

(*1*) A [bank] must use a 99th percentile one-tailed confidence interval.

(*2*) The minimum holding period for a repo-style transaction is five business days and for an eligible margin loan is ten business days. When a [bank] calculates an own-estimates haircut on a T_N-day holding period, which is different from the minimum holding period for the transaction type, the applicable haircut (H_M) is calculated using the following square root of time formula:

$$H_M = H_N \sqrt{\frac{T_M}{T_N}}\text{, where}$$

(*i*) T_M equals 5 for repo-style transactions and 10 for eligible margin loans;

(*ii*) T_N equals the holding period used by the [bank] to derive H_N; and

(*iii*) H_N equals the haircut based on the holding period T_N.

(*3*) A [bank] must adjust holding periods upwards where and as appropriate to take into account the illiquidity of an instrument.

(*4*) The historical observation period must be at least one year.

(*5*) A [bank] must update its data sets and recompute haircuts no less frequently than quarterly and must also reassess data sets and haircuts whenever market prices change materially.

(B) With respect to debt securities that have an applicable external rating of investment grade, a [bank] may calculate haircuts for categories of securities. For a category of securities, the [bank] must calculate the haircut on the basis of internal volatility estimates for securities in that category that are representative of the securities in that category that the [bank] has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. In determining relevant categories, the [bank] must at a minimum take into account:

(*1*) The type of issuer of the security;

(*2*) The applicable external rating of the security;

(*3*) The maturity of the security; and

(*4*) The interest rate sensitivity of the security.

(C) With respect to debt securities that have an applicable external rating of below investment grade and equity securities, a [bank] must calculate a separate haircut for each individual security.

(D) Where an exposure or collateral (whether in the form of cash or securities) is denominated in a currency that differs from the settlement currency, the [bank] must calculate a separate currency mismatch haircut for its net position in each mismatched currency based on estimated volatilities of foreign exchange rates between the mismatched currency and the settlement currency.

(E) A [bank]'s own estimates of market price and foreign exchange rate volatilities may not take into account the correlations among securities and foreign exchange rates on either the exposure or collateral side of a transaction (or netting set) or the correlations among securities and foreign exchange rates between the exposure and collateral sides of the transaction (or netting set).

(3) *Simple VaR methodology*. With the prior written approval of the [AGENCY], a [bank] may estimate EAD for a netting set using a VaR model that meets the requirements in paragraph (b)(3)(iii) of this section. In such event, the [bank] must set EAD equal to max {0, [(ΣE—ΣC) + PFE]}, where:

(i) ΣE equals the value of the exposure (the sum of the current market values of all instruments, gold, and cash the [bank] has lent, sold subject to repurchase, or posted as collateral to the counterparty under the netting set);

(ii) ΣC equals the value of the collateral (the sum of the current market values of all instruments, gold, and cash the [bank] has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the netting set); and

(iii) PFE (potential future exposure) equals the [bank]'s empirically based best estimate of the 99th percentile, one-tailed confidence interval for an increase in the value of (ΣE—ΣC) over a five-business-day holding period for repo-style transactions or over a ten-business-day holding period for eligible margin loans using a minimum one-year historical observation period of price data representing the instruments that the [bank] has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. The [bank] must validate its VaR model, including by establishing and maintaining a rigorous and regular back-testing regime.

(c) *EAD for OTC derivative contracts.* (1) A [bank] must determine the EAD for an OTC derivative contract that is not subject to a qualifying master netting agreement using the current exposure methodology in paragraph (c)(5) of this section or using the internal models methodology described in paragraph (d) of this section.

(2) A [bank] must determine the EAD for multiple OTC derivative contracts that are subject to a qualifying master netting agreement using the current exposure methodology in paragraph (c)(6) of this section or using the internal models methodology described in paragraph (d) of this section.

(3) *Counterparty credit risk for credit derivatives.* Notwithstanding the above, (i) A [bank] that purchases a credit derivative that is recognized under section 33 or 34 of this appendix as a credit risk mitigant for an exposure that is not a covered position under [the market risk rule] need not compute a separate counterparty credit risk capital requirement under this section so long as the [bank] does so consistently for all such credit derivatives and either includes all or excludes all such credit derivatives that are subject to a master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(ii) A [bank] that is the protection provider in a credit derivative must treat the credit derivative as a wholesale exposure to the reference obligor and need not compute a counterparty credit risk capital requirement for the credit derivative under this section, so long as it does so consistently for all such credit derivatives and either includes all or excludes all such credit derivatives that are subject to a master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes (unless the [bank] is treating the credit derivative as a covered position under [the market risk rule], in which case the [bank] must compute a supplemental counterparty credit risk capital requirement under this section).

(4) *Counterparty credit risk for equity derivatives.* A [bank] must treat an equity derivative contract as an equity exposure and compute a risk-weighted asset amount for the equity derivative contract under part VI (unless the [bank] is treating the contract as a covered position under [the market risk rule]). In addition, if the [bank] is treating the contract as a covered position under [the market risk rule] and in certain other cases described in section 55 of this appendix, the [bank] must also calculate a risk-based capital requirement for the counterparty credit risk of an equity derivative contract under this part.

(5) *Single OTC derivative contract.* Except as modified by paragraph (c)(7) of this section, the EAD for a single OTC derivative contract that is not subject to a qualifying master netting agreement is equal to the sum of the [bank]'s current credit exposure and potential future credit exposure (PFE) on the derivative contract.

(i) *Current credit exposure.* The current credit exposure for a single OTC derivative contract is the greater of the mark-to-market value of the derivative contract or zero.

(ii) *PFE.* The PFE for a single OTC derivative contract, including an OTC derivative contract with a negative mark-to-market value, is calculated by multiplying the notional principal amount of the derivative contract by the appropriate conversion factor in Table 4. For purposes of calculating either the PFE under this paragraph or the gross PFE under paragraph (c)(6) of this section for exchange rate contracts and other similar contracts in which the notional principal amount is equivalent to the cash flows, notional principal amount is the net receipts to each party falling due on each value date in each currency. For any OTC derivative contract that does not fall within one of the specified categories in Table 4, the PFE must be calculated using the ''other'' conversion factors. A [bank] must use an OTC derivative contract's effective notional principal amount (that is, its apparent or stated notional principal amount multiplied by any multiplier in the OTC derivative contract) rather than its apparent or stated notional principal amount in calculating PFE. PFE of the protection provider of a credit derivative is capped at the net present value of the amount of unpaid premiums.

TABLE 4.—CONVERSION FACTOR MATRIX FOR OTC DERIVATIVE CONTRACTS [1]

Remaining maturity [2]	Interest rate	Foreign exchange rate and gold	Credit (investment-grade reference obligor)[3]	Credit (non-investment-grade reference obligor)	Equity	Precious metals (except gold)	Other
One year or less	0.00	0.01	0.05	0.10	0.06	0.07	0.10
Over one to five years	0.005	0.05	0.05	0.10	0.08	0.07	0.12
Over five years	0.015	0.075	0.05	0.10	0.10	0.08	0.15

[1] For an OTC derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

[2] For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

[3] A [bank] must use the column labeled ''Credit (investment-grade reference obligor)'' for a credit derivative whose reference obligor has an outstanding unsecured long-term debt security without credit enhancement that has a long-term applicable external rating of at least investment grade. A [bank] must use the column labeled ''Credit (non-investment-grade reference obligor)'' for all other credit derivatives.

(6) *Multiple OTC derivative contracts subject to a qualifying master netting agreement.* Except as modified by paragraph (c)(7) of this section, the EAD for multiple OTC derivative contracts subject to a qualifying master netting agreement is equal to the sum of the net current credit exposure and the adjusted sum of the PFE exposure for all OTC derivative contracts subject to the qualifying master netting agreement.

(i) *Net current credit exposure.* The net current credit exposure is the greater of:

(A) The net sum of all positive and negative mark-to-market values of the individual OTC derivative contracts subject to the qualifying master netting agreement; or

(B) zero.

(ii) *Adjusted sum of the PFE.* The adjusted sum of the PFE, Anet, is calculated as Anet = (0.4×Agross)+(0.6×NGR×Agross), where:

(A) Agross = the gross PFE (that is, the sum of the PFE amounts (as determined under paragraph (c)(5)(ii) of this section) for each individual OTC derivative contract subject to the qualifying master netting agreement); and

(B) NGR = the net to gross ratio (that is, the ratio of the net current credit exposure to the gross current credit exposure). In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures (as determined under paragraph (c)(5)(i) of this section) of all individual OTC derivative contracts subject to the qualifying master netting agreement.

(7) *Collateralized OTC derivative contracts.* A [bank] may recognize the credit risk mitigation benefits of financial collateral that secures an OTC derivative contract or single-product netting set of OTC derivatives by factoring the collateral into its LGD estimates for the contract or netting set. Alternatively, a [bank] may recognize the credit risk mitigation benefits of financial collateral that secures such a contract or netting set that is marked to market on a daily basis and subject to a daily margin maintenance requirement by estimating an unsecured LGD for the contract or netting set and adjusting the EAD calculated under paragraph (c)(5) or (c)(6) of this section using the collateral haircut approach in paragraph (b)(2) of this section. The [bank] must substitute the EAD calculated under paragraph (c)(5) or (c)(6) of this section for ΣE in the equation in paragraph (b)(2)(i) of this section and must use a ten-business-day minimum holding period ($T_M = 10$).

(d) *Internal models methodology.* (1) With prior written approval from the [AGENCY], a [bank] may use the internal models methodology in this paragraph (d) to determine EAD for counterparty credit risk for OTC derivative contracts (collateralized or uncollateralized) and single-product netting sets thereof, for eligible margin loans and single-product netting sets thereof, and for repo-style transactions and single-product netting sets thereof. A [bank] that uses the internal models methodology for a particular transaction type (OTC derivative contracts, eligible margin loans, or repo-style transactions) must use the internal models methodology for all transactions of that transaction type. A [bank] may choose to use the internal models methodology for one or two of these three types of exposures and not the other types. A [bank] may also use the internal models methodology for OTC derivative contracts, eligible margin loans, and repo-style transactions subject to a qualifying cross-product netting agreement if:

(i) The [bank] effectively integrates the risk mitigating effects of cross-product netting into its risk management and other information technology systems; and

(ii) The [bank] obtains the prior written approval of the [AGENCY]. A [bank] that uses the internal models methodology for a transaction type must receive approval from the [AGENCY] to cease using the methodology for that transaction type or to make a material change to its internal model.

(2) Under the internal models methodology, a [bank] uses an internal model to estimate the expected exposure (EE) for a netting set and then calculates EAD based on that EE.

(i) The [bank] must use its internal model's probability distribution for changes in the market value of a netting set that are attributable to changes in market variables to determine EE.

(ii) Under the internal models methodology, EAD = α x effective EPE, or, subject to [AGENCY] approval as provided in paragraph (d)(7), a more conservative measure of EAD.

$$\text{(A) EffectiveEPE}_{t_k} = \sum_{k=1}^{n} \text{EffectiveEE}_{t_k} \times \Delta t_k$$

(that is, effective EPE is the time-weighted average of effective EE where the weights are the proportion that an individual effective EE represents in a one-year time interval) where:

(*1*) Effective EE_{t_k} = max (Effective $EE_{t_{k-1}}$, EE_{t_k}) (that is, for a specific $date_{t_k}$, effective EE is the greater of EE at that date or the effective EE at the previous date); and

(*2*) t_k represents the kth future time period in the model and there are n time periods represented in the model over the first year; and

(B) α = 1.4 except as provided in paragraph (d)(6), or when the [AGENCY] has determined that the [bank] must set α higher based on the [bank]'s specific characteristics of counterparty credit risk.

(iii) A [bank] may include financial collateral currently posted by the counterparty as collateral (but may not include other forms of collateral) when calculating EE.

(iv) If a [bank] hedges some or all of the counterparty credit risk associated with a netting set using an eligible credit derivative, the [bank] may take the reduction in exposure to the counterparty into account when estimating EE. If the [bank] recognizes this reduction in exposure to the counterparty in its estimate of EE, it must also use its internal model to estimate a separate EAD for the [bank]'s exposure to the protection provider of the credit derivative.

(3) To obtain [AGENCY] approval to calculate the distributions of exposures upon which the EAD calculation is based, the [bank] must demonstrate to the satisfaction of the [AGENCY] that it has been using for at least one year an internal model that broadly meets the following minimum standards, with which the [bank] must maintain compliance:

(i) The model must have the systems capability to estimate the expected exposure to the counterparty on a daily basis (but is not expected to estimate or report expected exposure on a daily basis).

(ii) The model must estimate expected exposure at enough future dates to reflect accurately all the future cash flows of contracts in the netting set.

(iii) The model must account for the possible non-normality of the exposure distribution, where appropriate.

(iv) The [bank] must measure, monitor, and control current counterparty exposure and the exposure to the counterparty over the whole life of all contracts in the netting set.

(v) The [bank] must be able to measure and manage current exposures gross and net of collateral held, where appropriate. The [bank] must estimate expected exposures for OTC derivative contracts both with and without the effect of collateral agreements.

(vi) The [bank] must have procedures to identify, monitor, and control specific wrong-way risk throughout the life of an exposure. Wrong-way risk in this context is the risk that future exposure to a counterparty will be high when the counterparty's probability of default is also high.

(vii) The model must use current market data to compute current exposures. When estimating model parameters based on historical data, at least three years of historical data that cover a wide range of economic conditions must be used and must be updated quarterly or more frequently if market conditions warrant. The [bank] should consider using model parameters based on forward-looking measures, where appropriate.

(viii) A [bank] must subject its internal model to an initial validation and annual model review process. The model review should consider whether the inputs and risk factors, as well as the model outputs, are appropriate.

(4) *Maturity*. (i) If the remaining maturity of the exposure or the longest-dated contract in the netting set is greater than one year, the [bank] must set M for the exposure or netting set equal to the lower of five years or M(EPE),[3] where:

$$\text{(A)}\ M(EPE) = 1 + \frac{\sum_{t_k > 1\,year}^{maturity} EE_k \times \Delta t_k \times df_k}{\sum_{k=1}^{t_k \le 1\,year} effectiveEE_k \times \Delta t_k \times df_k}$$

(B) df_k is the risk-free discount factor for future time period t_k; and

(C) $\Delta t_k = t_k - t_{k-1}$.

(ii) If the remaining maturity of the exposure or the longest-dated contract in the netting set is one year or less, the [bank] must set M for the exposure or netting set equal to one year, except as provided in paragraph (d)(7) of section 31 of this appendix.

(5) *Collateral agreements*. A [bank] may capture the effect on EAD of a collateral agreement that requires receipt of collateral when exposure to the counterparty increases but may not capture the effect on EAD of a collateral agreement that requires receipt of collateral when counterparty credit quality deteriorates. For this purpose, a collateral agreement means a legal contract that specifies the time when, and circumstances under which, the counterparty is required to pledge collateral to the [bank] for a single financial contract or for all financial contracts in a netting set and confers upon the [bank] a perfected, first priority security interest (notwithstanding the prior security interest of any custodial agent), or the legal equivalent thereof, in the collateral posted by the counterparty under the agreement. This security interest must provide the [bank] with a right to close out the financial positions and liquidate the collateral upon an event of default of, or failure to perform by, the counterparty under the collateral agreement. A contract would not satisfy this requirement if the [bank]'s exercise of rights under the agreement may be stayed or avoided under applicable law in the relevant jurisdictions. Two methods are available to capture the effect of a collateral agreement:

(i) With prior written approval from the [AGENCY], a [bank] may include the effect of a collateral agreement within its internal model used to calculate EAD. The [bank] may set EAD equal to the expected exposure at the end of the margin period of risk. The margin period of risk means, with respect to a netting set subject to a collateral agreement, the time period from the most recent exchange of collateral with a counterparty until the next required exchange of collateral plus the period of time required to sell and realize the proceeds of the least liquid collateral that can be delivered under the terms of the collateral agreement and, where applicable, the period of time required to re-hedge the resulting market risk, upon the default of the counterparty. The minimum margin period of risk is five business days for repo-style transactions and ten business days for other transactions when liquid financial collateral is posted under a daily margin maintenance requirement. This period should be extended to cover any additional time between margin calls; any potential closeout difficulties; any delays in selling collateral, particularly if the collateral is illiquid; and any impediments to prompt re-hedging of any market risk.

(ii) A [bank] that can model EPE without collateral agreements but cannot achieve the higher level of modeling sophistication to model EPE with collateral agreements can set effective EPE for a collateralized netting set equal to the lesser of:

(A) The threshold, defined as the exposure amount at which the counterparty is required to post collateral under the collateral agreement, if the threshold is positive, plus an add-on that reflects the potential increase in exposure of the netting set over the margin period of risk. The add-on is computed as the

[3] Alternatively, a [bank] that uses an internal model to calculate a one-sided credit valuation adjustment may use the effective credit duration estimated by the model as M(EPE) in place of the formula in paragraph (d)(4).

expected increase in the netting set's exposure beginning from current exposure of zero over the margin period of risk. The margin period of risk must be at least five business days for netting sets consisting only of repo-style transactions subject to daily re-margining and daily marking-to-market, and ten business days for all other netting sets; or

(B) Effective EPE without a collateral agreement.

(6) *Own estimate of alpha.* With prior written approval of the [AGENCY], a [bank] may calculate alpha as the ratio of economic capital from a full simulation of counterparty exposure across counterparties that incorporates a joint simulation of market and credit risk factors (numerator) and economic capital based on EPE (denominator), subject to a floor of 1.2. For purposes of this calculation, economic capital is the unexpected losses for all counterparty credit risks measured at a 99.9 percent confidence level over a one-year horizon. To receive approval, the [bank] must meet the following minimum standards to the satisfaction of the [AGENCY]:

(i) The [bank]'s own estimate of alpha must capture in the numerator the effects of:

(A) The material sources of stochastic dependency of distributions of market values of transactions or portfolios of transactions across counterparties;

(B) Volatilities and correlations of market risk factors used in the joint simulation, which must be related to the credit risk factor used in the simulation to reflect potential increases in volatility or correlation in an economic downturn, where appropriate; and

(C) The granularity of exposures (that is, the effect of a concentration in the proportion of each counterparty's exposure that is driven by a particular risk factor).

(ii) The [bank] must assess the potential model uncertainty in its estimates of alpha.

(iii) The [bank] must calculate the numerator and denominator of alpha in a consistent fashion with respect to modeling methodology, parameter specifications, and portfolio composition.

(iv) The [bank] must review and adjust as appropriate its estimates of the numerator and denominator of alpha on at least a quarterly basis and more frequently when the composition of the portfolio varies over time.

(7) *Other measures of counterparty exposure.* With prior written approval of the [AGENCY], a [bank] may set EAD equal to a measure of counterparty credit risk exposure, such as peak EAD, that is more conservative than an alpha of 1.4 (or higher under the terms of paragraph (d)(2)(ii)(B) of this section) times EPE for every counterparty whose EAD will be measured under the alternative measure of counterparty exposure. The [bank] must demonstrate the conservatism of the measure of counterparty credit risk exposure used for EAD. For material portfolios of new OTC derivative products, the [bank] may assume that the current exposure methodology in paragraphs (c)(5) and (c)(6) of this section meets the conservatism requirement of this paragraph for a period not to exceed 180 days. For immaterial portfolios of OTC derivative contracts, the [bank] generally may assume that the current exposure methodology in paragraphs (c)(5) and (c)(6) of this section meets the conservatism requirement of this paragraph.

Section 33. Guarantees and Credit Derivatives: PD Substitution and LGD Adjustment Approaches

(a) *Scope.* (1) This section applies to wholesale exposures for which:

(i) Credit risk is fully covered by an eligible guarantee or eligible credit derivative; or

(ii) Credit risk is covered on a pro rata basis (that is, on a basis in which the [bank] and the protection provider share losses proportionately) by an eligible guarantee or eligible credit derivative.

(2) Wholesale exposures on which there is a tranching of credit risk (reflecting at least two different levels of seniority) are securitization exposures subject to the securitization framework in part V.

(3) A [bank] may elect to recognize the credit risk mitigation benefits of an eligible guarantee or eligible credit derivative covering an exposure described in paragraph (a)(1) of this section by using the PD substitution approach or the LGD adjustment approach in paragraph (c) of this section or, if the transaction qualifies, using the double default treatment in section 34 of this appendix. A [bank]'s PD and LGD for the hedged exposure may not be lower than the PD and LGD floors described in paragraphs (d)(2) and (d)(3) of section 31 of this appendix.

(4) If multiple eligible guarantees or eligible credit derivatives cover a single exposure described in paragraph (a)(1) of this section, a [bank] may treat the hedged exposure as multiple separate exposures each covered by a single eligible guarantee or eligible credit derivative and may calculate a separate risk-based capital requirement for each separate exposure as described in paragraph (a)(3) of this section.

(5) If a single eligible guarantee or eligible credit derivative covers multiple hedged wholesale exposures described in paragraph (a)(1) of this section, a [bank] must treat each hedged exposure as covered by a separate eligible guarantee or eligible credit derivative and must calculate a separate risk-based capital requirement for each exposure as described in paragraph (a)(3) of this section.

(6) A [bank] must use the same risk parameters for calculating ECL as it uses for calculating the risk-based capital requirement for the exposure.

(b) *Rules of recognition.* (1) A [bank] may only recognize the credit risk mitigation benefits of eligible guarantees and eligible credit derivatives.

(2) A [bank] may only recognize the credit risk mitigation benefits of an eligible credit derivative to hedge an exposure that is different from the credit derivative's reference exposure used for determining the derivative's cash settlement value, deliverable obligation, or occurrence of a credit event if:

(i) The reference exposure ranks pari passu (that is, equally) with or is junior to the hedged exposure; and

(ii) The reference exposure and the hedged exposure are exposures to the same legal entity, and legally enforceable cross-default or cross-acceleration clauses are in place to assure payments under the credit derivative are triggered when the obligor fails to pay under the terms of the hedged exposure.

(c) *Risk parameters for hedged exposures*—(1) *PD substitution approach*—(i) *Full coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the EAD of the hedged exposure, a [bank] may recognize the guarantee or credit derivative in determining the [bank]'s risk-based capital requirement for the hedged exposure by substituting the PD associated with the rating grade of the protection provider for the PD associated with the rating grade of the obligor in the risk-based capital formula applicable to the guarantee or credit derivative in Table 2 and using the appropriate LGD as described in paragraph (c)(1)(iii) of this section. If the [bank] determines that full substitution of the protection provider's PD leads to an inappropriate degree of risk mitigation, the [bank] may substitute a higher PD than that of the protection provider.

(ii) *Partial coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is less than the EAD of the hedged exposure, the [bank] must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative.

(A) The [bank] must calculate its risk-based capital requirement for the protected exposure under section 31 of this appendix, where PD is the protection provider's PD, LGD is determined under paragraph (c)(1)(iii) of this section, and EAD is P. If the [bank] determines that full substitution leads to an inappropriate degree of risk mitigation, the [bank] may use a higher PD than that of the protection provider.

(B) The [bank] must calculate its risk-based capital requirement for the unprotected exposure under section 31 of this appendix, where PD is the obligor's PD, LGD is the hedged exposure's LGD (not adjusted to reflect the guarantee or credit derivative), and EAD is the EAD of the original hedged exposure minus P.

(C) The treatment in this paragraph (c)(1)(ii) is applicable when the credit risk of a wholesale exposure is covered on a partial pro rata basis or when an adjustment is made to the effective notional amount of the guarantee or credit derivative under paragraph (d), (e), or (f) of this section.

(iii) *LGD of hedged exposures.* The LGD of a hedged exposure under the PD substitution approach is equal to:

(A) The lower of the LGD of the hedged exposure (not adjusted to reflect the guarantee or credit derivative) and the LGD of the guarantee or credit derivative, if the guarantee or credit derivative provides the [bank] with the option to receive immediate payout upon triggering the protection; or

(B) The LGD of the guarantee or credit derivative, if the guarantee or credit derivative does not provide the [bank] with the option to receive immediate payout upon triggering the protection.

(2) *LGD adjustment approach*—(i) *Full coverage*. If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the EAD of the hedged exposure, the [bank]'s risk-based capital requirement for the hedged exposure is the greater of:

(A) The risk-based capital requirement for the exposure as calculated under section 31 of this appendix, with the LGD of the exposure adjusted to reflect the guarantee or credit derivative; or

(B) The risk-based capital requirement for a direct exposure to the protection provider as calculated under section 31 of this appendix, using the PD for the protection provider, the LGD for the guarantee or credit derivative, and an EAD equal to the EAD of the hedged exposure.

(ii) *Partial coverage*. If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is less than the EAD of the hedged exposure, the [bank] must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative.

(A) The [bank]'s risk-based capital requirement for the protected exposure would be the greater of:

(*1*) The risk-based capital requirement for the protected exposure as calculated under section 31 of this appendix, with the LGD of the exposure adjusted to reflect the guarantee or credit derivative and EAD set equal to P; or

(*2*) The risk-based capital requirement for a direct exposure to the guarantor as calculated under section 31 of this appendix, using the PD for the protection provider, the LGD for the guarantee or credit derivative, and an EAD set equal to P.

(B) The [bank] must calculate its risk-based capital requirement for the unprotected exposure under section 31 of this appendix, where PD is the obligor's PD, LGD is the hedged exposure's LGD (not adjusted to reflect the guarantee or credit derivative), and EAD is the EAD of the original hedged exposure minus P.

(3) *M of hedged exposures*. The M of the hedged exposure is the same as the M of the exposure if it were unhedged.

(d) *Maturity mismatch*. (1) A [bank] that recognizes an eligible guarantee or eligible credit derivative in determining its risk-based capital requirement for a hedged exposure must adjust the effective notional amount of the credit risk mitigant to reflect any maturity mismatch between the hedged exposure and the credit risk mitigant.

(2) A maturity mismatch occurs when the residual maturity of a credit risk mitigant is less than that of the hedged exposure(s).

(3) The residual maturity of a hedged exposure is the longest possible remaining time before the obligor is scheduled to fulfill its obligation on the exposure. If a credit risk mitigant has embedded options that may reduce its term, the [bank] (protection purchaser) must use the shortest possible residual maturity for the credit risk mitigant. If a call is at the discretion of the protection provider, the residual maturity of the credit risk mitigant is at the first call date. If the call is at the discretion of the [bank] (protection purchaser), but the terms of the arrangement at origination of the credit risk mitigant contain a positive incentive for the [bank] to call the transaction before contractual maturity, the remaining time to the first call date is the residual maturity of the credit risk mitigant. For example, where there is a step-up in cost in conjunction with a call feature or where the effective cost of protection increases over time even if credit quality remains the same or improves, the residual maturity of the credit risk mitigant will be the remaining time to the first call.

(4) A credit risk mitigant with a maturity mismatch may be recognized only if its original maturity is greater than or equal to one year and its residual maturity is greater than three months.

(5) When a maturity mismatch exists, the [bank] must apply the following adjustment to the effective notional amount of the credit risk mitigant: $Pm = E \times (t - 0.25)/(T - 0.25)$, where:

(i) Pm = effective notional amount of the credit risk mitigant, adjusted for maturity mismatch;

(ii) E = effective notional amount of the credit risk mitigant;

(iii) t = the lesser of T or the residual maturity of the credit risk mitigant, expressed in years; and

(iv) T = the lesser of five or the residual maturity of the hedged exposure, expressed in years.

(e) *Credit derivatives without restructuring as a credit event*. If a [bank] recognizes an eligible credit derivative that does not include as a credit event a restructuring of the hedged exposure involving forgiveness or postponement of principal, interest, or fees that results in a credit loss event (that is, a charge-off, specific provision, or other similar debit to the profit and loss account), the [bank] must apply the following adjustment to the effective notional amount of the credit derivative: $Pr = Pm \times 0.60$, where:

(1) Pr = effective notional amount of the credit risk mitigant, adjusted for lack of restructuring event (and maturity mismatch, if applicable); and

(2) Pm = effective notional amount of the credit risk mitigant adjusted for maturity mismatch (if applicable).

(f) *Currency mismatch*. (1) If a [bank] recognizes an eligible guarantee or eligible credit derivative that is denominated in a currency different from that in which the hedged exposure is denominated, the [bank] must apply the following formula to the effective notional amount of the guarantee or credit derivative: $Pc = Pr \times (1 - H_{FX})$, where:

(i) Pc = effective notional amount of the credit risk mitigant, adjusted for currency mismatch (and maturity mismatch and lack of restructuring event, if applicable);

(ii) Pr = effective notional amount of the credit risk mitigant (adjusted for maturity mismatch and lack of restructuring event, if applicable); and

(iii) H_{FX} = haircut appropriate for the currency mismatch between the credit risk mitigant and the hedged exposure.

(2) A [bank] must set H_{FX} equal to 8 percent unless it qualifies for the use of and uses its own internal estimates of foreign exchange volatility based on a ten-business-day holding period and daily marking-to-market and remargining. A [bank] qualifies for the use of its own internal estimates of foreign exchange volatility if it qualifies for:

(i) The own-estimates haircuts in paragraph (b)(2)(iii) of section 32 of this appendix;

(ii) The simple VaR methodology in paragraph (b)(3) of section 32 of this appendix; or

(iii) The internal models methodology in paragraph (d) of section 32 of this appendix.

(3) A [bank] must adjust H_{FX} calculated in paragraph (f)(2) of this section upward if the [bank] revalues the guarantee or credit derivative less frequently than once every ten business days using the square root of time formula provided in paragraph (b)(2)(iii)(A)(*2*) of section 32 of this appendix.

Section 34. Guarantees and Credit Derivatives: Double Default Treatment

(a) *Eligibility and operational criteria for double default treatment*. A [bank] may recognize the credit risk mitigation benefits of a guarantee or credit derivative covering an exposure described in paragraph (a)(1) of section 33 of this appendix by applying the double default treatment in this section if all the following criteria are satisfied.

(1) The hedged exposure is fully covered or covered on a pro rata basis by:

(i) An eligible guarantee issued by an eligible double default guarantor; or

(ii) An eligible credit derivative that meets the requirements of paragraph (b)(2) of section 33 of this appendix and is issued by an eligible double default guarantor.

(2) The guarantee or credit derivative is:

(i) An uncollateralized guarantee or uncollateralized credit derivative (for example, a credit default swap) that provides protection with respect to a single reference obligor; or

(ii) An nth-to-default credit derivative (subject to the requirements of paragraph (m) of section 42 of this appendix).

(3) The hedged exposure is a wholesale exposure (other than a sovereign exposure).

(4) The obligor of the hedged exposure is not:

(i) An eligible double default guarantor or an affiliate of an eligible double default guarantor; or

(ii) An affiliate of the guarantor.

(5) The [bank] does not recognize any credit risk mitigation benefits of the guarantee or credit derivative for the hedged exposure other than through application of the double default treatment as provided in this section.

(6) The [bank] has implemented a process (which has received the prior, written approval of the [AGENCY]) to detect excessive correlation between the creditworthiness of the obligor of the hedged exposure and the protection provider. If excessive correlation is present, the [bank] may not use the double default treatment for the hedged exposure.

(b) *Full coverage.* If the transaction meets the criteria in paragraph (a) of this section and the protection amount (P) of the guarantee or credit derivative is at least equal to the EAD of the hedged exposure, the [bank] may determine its risk-weighted asset amount for the hedged exposure under paragraph (e) of this section.

(c) *Partial coverage.* If the transaction meets the criteria in paragraph (a) of this section and the protection amount (P) of the guarantee or credit derivative is less than the EAD of the hedged exposure, the [bank] must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize double default treatment on the protected portion of the exposure.

(1) For the protected exposure, the [bank] must set EAD equal to P and calculate its risk-weighted asset amount as provided in paragraph (e) of this section.

(2) For the unprotected exposure, the [bank] must set EAD equal to the EAD of the original exposure minus P and then calculate its risk-weighted asset amount as provided in section 31 of this appendix.

(d) *Mismatches.* For any hedged exposure to which a [bank] applies double default treatment, the [bank] must make applicable adjustments to the protection amount as required in paragraphs (d), (e), and (f) of section 33 of this appendix.

(e) *The double default dollar risk-based capital requirement.* The dollar risk-based capital requirement for a hedged exposure to which a [bank] has applied double default treatment is K_{DD} multiplied by the EAD of the exposure. K_{DD} is calculated according to the following formula: $K_{DD} = K_o \times (0.15 + 160 \times PD_g)$,

Where:

(1)

$$K_O = LGD_g \times \left[N\left(\frac{N^{-1}(PD_o) + N^{-1}(0.999)\sqrt{\rho_{os}}}{\sqrt{1-\rho_{os}}} \right) - PD_o \right] \times \left[\frac{1 + (M - 2.5) \times b}{1 - 1.5 \times b} \right]$$

(2) PD_g = PD of the protection provider.

(3) PD_o = PD of the obligor of the hedged exposure.

(4) LGD_g = (i) The lower of the LGD of the hedged exposure (not adjusted to reflect the guarantee or credit derivative) and the LGD of the guarantee or credit derivative, if the guarantee or credit derivative provides the [bank] with the option to receive immediate payout on triggering the protection; or

(ii) The LGD of the guarantee or credit derivative, if the guarantee or credit derivative does not provide the [bank] with the option to receive immediate payout on triggering the protection.

(5) ρ_{OS} (asset value correlation of the obligor) is calculated according to the appropriate formula for (R) provided in Table 2 in section 31 of this appendix, with PD equal to PD_o.

(6) b (maturity adjustment coefficient) is calculated according to the formula for b provided in Table 2 in section 31 of this appendix, with PD equal to the lesser of PD_o and PD_g.

(7) M (maturity) is the effective maturity of the guarantee or credit derivative, which may not be less than one year or greater than five years.

Section 35. Risk-Based Capital Requirement for Unsettled Transactions

(a) *Definitions.* For purposes of this section:

(1) *Delivery-versus-payment (DvP) transaction* means a securities or commodities transaction in which the buyer is obligated to make payment only if the seller has made delivery of the securities or commodities and the seller is obligated to deliver the securities or commodities only if the buyer has made payment.

(2) *Payment-versus-payment (PvP) transaction* means a foreign exchange transaction in which each counterparty is obligated to make a final transfer of one or more currencies only if the other counterparty has made a final transfer of one or more currencies.

(3) *Normal settlement period.* A transaction has a *normal settlement period* if the contractual settlement period for the transaction is equal to or less than the market standard for the instrument underlying the transaction and equal to or less than five business days.

(4) *Positive current exposure.* The positive current exposure of a [bank] for a transaction is the difference between the transaction value at the agreed settlement price and the current market price of the transaction, if the difference results in a credit exposure of the [bank] to the counterparty.

(b) *Scope.* This section applies to all transactions involving securities, foreign exchange instruments, and commodities that have a risk of delayed settlement or delivery. This section does not apply to:

(1) Transactions accepted by a qualifying central counterparty that are subject to daily marking-to-market and daily receipt and payment of variation margin;

(2) Repo-style transactions, including unsettled repo-style transactions (which are addressed in sections 31 and 32 of this appendix);

(3) One-way cash payments on OTC derivative contracts (which are addressed in sections 31 and 32 of this appendix); or

(4) Transactions with a contractual settlement period that is longer than the normal settlement period (which are treated as OTC derivative contracts and addressed in sections 31 and 32 of this appendix).

(c) *System-wide failures.* In the case of a system-wide failure of a settlement or clearing system, the [AGENCY] may waive risk-based capital requirements for unsettled and failed transactions until the situation is rectified.

(d) *Delivery-versus-payment (DvP) and payment-versus-payment (PvP) transactions.* A [bank] must hold risk-based capital against any DvP or PvP transaction with a normal settlement period if the [bank]'s counterparty has not made delivery or payment within five business days after the settlement date. The [bank] must determine its risk-weighted asset amount for such a transaction by multiplying the positive current exposure of the transaction for the [bank] by the appropriate risk weight in Table 5.

TABLE 5.—RISK WEIGHTS FOR UNSETTLED DVP AND PVP TRANSACTIONS

Number of business days after contractual settlement date	Risk weight to be applied to positive current exposure (percent)
From 5 to 15	100
From 16 to 30	625
From 31 to 45	937.5
46 or more	1,250

(e) *Non-DvP/non-PvP (non-delivery-versus-payment/non-payment-versus-payment) transactions.* (1) A [bank] must hold risk-based capital against any non-DvP/non-PvP transaction with a normal settlement period if the [bank] has delivered cash, securities, commodities, or currencies to its counterparty but has not received its corresponding deliverables by the end of the same business day. The [bank] must continue to hold risk-based capital against the transaction until the [bank] has received its corresponding deliverables.

(2) From the business day after the [bank] has made its delivery until five business days after the counterparty delivery is due, the [bank] must calculate its risk-based capital requirement for the transaction by treating the current market value of the deliverables owed to the [bank] as a wholesale exposure.

(i) A [bank] may assign an obligor rating to a counterparty for which it is not otherwise required under this appendix to assign an obligor rating on the basis of the applicable external rating of any outstanding unsecured long-term debt security without credit enhancement issued by the counterparty.

(ii) A [bank] may use a 45 percent LGD for the transaction rather than estimating LGD for the transaction provided the [bank] uses the 45 percent LGD for all transactions described in paragraphs (e)(1) and (e)(2) of this section.

(iii) A [bank] may use a 100 percent risk weight for the transaction provided the [bank] uses this risk weight for all transactions described in paragraphs (e)(1) and (e)(2) of this section.

(3) If the [bank] has not received its deliverables by the fifth business day after the counterparty delivery was due, the [bank] must deduct the current market value of the deliverables owed to the [bank] 50 percent from tier 1 capital and 50 percent from tier 2 capital.

(f) *Total risk-weighted assets for unsettled transactions.* Total risk-weighted assets for unsettled transactions is the sum of the risk-weighted asset amounts of all DvP, PvP, and non-DvP/non-PvP transactions.

Part V. Risk-Weighted Assets for Securitization Exposures

Section 41. Operational Criteria for Recognizing the Transfer of Risk

(a) *Operational criteria for traditional securitizations.* A [bank] that transfers exposures it has originated or purchased to a securitization SPE or other third party in connection with a traditional securitization may exclude the exposures from the calculation of its risk-weighted assets only if each of the conditions in this paragraph (a) is satisfied. A [bank] that meets these conditions must hold risk-based capital against any securitization exposures it retains in connection with the securitization. A [bank] that fails to meet these conditions must hold risk-based capital against the transferred exposures as if they had not been securitized and must deduct from tier 1 capital any after-tax gain-on-sale resulting from the transaction. The conditions are:

(1) The transfer is considered a sale under GAAP;

(2) The [bank] has transferred to third parties credit risk associated with the underlying exposures; and

(3) Any clean-up calls relating to the securitization are eligible clean-up calls.

(b) *Operational criteria for synthetic securitizations.* For synthetic securitizations, a [bank] may recognize for risk-based capital purposes the use of a credit risk mitigant to hedge underlying exposures only if each of the conditions in this paragraph (b) is satisfied. A [bank] that fails to meet these conditions must hold risk-based capital against the underlying exposures as if they had not been synthetically securitized. The conditions are:

(1) The credit risk mitigant is financial collateral, an eligible credit derivative from an eligible securitization guarantor or an eligible guarantee from an eligible securitization guarantor;

(2) The [bank] transfers credit risk associated with the underlying exposures to third parties, and the terms and conditions in the credit risk mitigants employed do not include provisions that:

(i) Allow for the termination of the credit protection due to deterioration in the credit quality of the underlying exposures;

(ii) Require the [bank] to alter or replace the underlying exposures to improve the credit quality of the pool of underlying exposures;

(iii) Increase the [bank]'s cost of credit protection in response to deterioration in the credit quality of the underlying exposures;

(iv) Increase the yield payable to parties other than the [bank] in response to a deterioration in the credit quality of the underlying exposures; or

(v) Provide for increases in a retained first loss position or credit enhancement provided by the [bank] after the inception of the securitization;

(3) The [bank] obtains a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk mitigant in all relevant jurisdictions; and

(4) Any clean-up calls relating to the securitization are eligible clean-up calls.

Section 42. Risk-Based Capital Requirement for Securitization Exposures

(a) *Hierarchy of approaches.* Except as provided elsewhere in this section:

(1) A [bank] must deduct from tier 1 capital any after-tax gain-on-sale resulting from a securitization and must deduct from total capital in accordance with paragraph (c) of this section the portion of any CEIO that does not constitute gain-on-sale.

(2) If a securitization exposure does not require deduction under paragraph (a)(1) of this section and qualifies for the Ratings-Based Approach in section 43 of this appendix, a [bank] must apply the Ratings-Based Approach to the exposure.

(3) If a securitization exposure does not require deduction under paragraph (a)(1) of this section and does not qualify for the Ratings-Based Approach, the [bank] may either apply the Internal Assessment Approach in section 44 of this appendix to the exposure (if the [bank], the exposure, and the relevant ABCP program qualify for the Internal Assessment Approach) or the Supervisory Formula Approach in section 45 of this appendix to the exposure (if the [bank] and the exposure qualify for the Supervisory Formula Approach).

(4) If a securitization exposure does not require deduction under paragraph (a)(1) of this section and does not qualify for the Ratings-Based Approach, the Internal Assessment Approach, or the Supervisory Formula Approach, the [bank] must deduct the exposure from total capital in accordance with paragraph (c) of this section.

(5) If a securitization exposure is an OTC derivative contract (other than a credit derivative) that has a first priority claim on the cash flows from the underlying exposures (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments), with approval of the [AGENCY], a [bank] may choose to set the risk-weighted asset amount of the exposure equal to the amount of the exposure as determined in paragraph (e) of this section rather than apply the hierarchy of approaches described in paragraphs (a) (1) through (4) of this section.

(b) *Total risk-weighted assets for securitization exposures.* A [bank]'s total risk-weighted assets for securitization exposures is equal to the sum of its risk-weighted assets calculated using the Ratings-Based Approach in section 43 of this appendix, the Internal Assessment Approach in section 44 of this appendix, and the Supervisory Formula Approach in section 45 of this appendix, and its risk-weighted assets amount for early amortization provisions calculated in section 47 of this appendix.

(c) *Deductions.* (1) If a [bank] must deduct a securitization exposure from total capital, the [bank] must take the deduction 50 percent from tier 1 capital and 50 percent from tier 2 capital. If the amount deductible from tier 2 capital exceeds the [bank]'s tier 2 capital, the [bank] must deduct the excess from tier 1 capital.

(2) A [bank] may calculate any deduction from tier 1 capital and tier 2 capital for a securitization exposure net of any deferred tax liabilities associated with the securitization exposure.

(d) *Maximum risk-based capital requirement.* Regardless of any other provisions of this part, unless one or more underlying exposures does not meet the definition of a wholesale, retail, securitization, or equity exposure, the total risk-based capital requirement for all securitization exposures held by a single [bank] associated with a single securitization (including any risk-based capital requirements that relate to an early amortization provision of the securitization but excluding any risk-based capital requirements that relate to the [bank]'s gain-on-sale or CEIOs associated with the securitization) may not exceed the sum of:

(1) The [bank]'s total risk-based capital requirement for the underlying exposures as if the [bank] directly held the underlying exposures; and

(2) The total ECL of the underlying exposures.

(e) *Amount of a securitization exposure.* (1) The amount of an on-balance sheet securitization exposure that is not a repo-style transaction, eligible margin loan, or OTC derivative contract (other than a credit derivative) is:

(i) The [bank]'s carrying value minus any unrealized gains and plus any unrealized losses on the exposure, if the exposure is a security classified as available-for-sale; or

(ii) The [bank]'s carrying value, if the exposure is not a security classified as available-for-sale.

(2) The amount of an off-balance sheet securitization exposure that is not an OTC derivative contract (other than a credit derivative) is the notional amount of the exposure. For an off-balance-sheet securitization exposure to an ABCP program, such as a liquidity facility, the notional amount may be reduced to the maximum potential amount that the [bank] could be required to fund given the ABCP program's current underlying assets (calculated without regard to the current credit quality of those assets).

(3) The amount of a securitization exposure that is a repo-style transaction, eligible margin loan, or OTC derivative contract (other than a credit derivative) is the EAD of the exposure as calculated in section 32 of this appendix.

(f) *Overlapping exposures.* If a [bank] has multiple securitization exposures that provide duplicative coverage of the underlying exposures of a securitization (such as when a [bank] provides a program-wide credit enhancement and multiple pool-specific liquidity facilities to an ABCP program), the [bank] is not required to hold duplicative risk-based capital against the overlapping position. Instead, the [bank] may apply to the overlapping position the applicable risk-based capital treatment that results in the highest risk-based capital requirement.

(g) *Securitizations of non-IRB exposures.* If a [bank] has a securitization exposure where any underlying exposure is not a wholesale exposure, retail exposure, securitization exposure, or equity exposure, the [bank] must:

(1) If the [bank] is an originating [bank], deduct from tier 1 capital any after-tax gain-on-sale resulting from the securitization and deduct from total capital in accordance with paragraph (c) of this section the portion of any CEIO that does not constitute gain-on-sale;

(2) If the securitization exposure does not require deduction under paragraph (g)(1), apply the RBA in section 43 of this appendix to the securitization exposure if the exposure qualifies for the RBA;

(3) If the securitization exposure does not require deduction under paragraph (g)(1) and does not qualify for the RBA, apply the IAA in section 44 of this appendix to the exposure (if the [bank], the exposure, and the relevant ABCP program qualify for the IAA); and

(4) If the securitization exposure does not require deduction under paragraph (g)(1) and does not qualify for the RBA or the IAA, deduct the exposure from total capital in accordance with paragraph (c) of this section.

(h) *Implicit support.* If a [bank] provides support to a securitization in excess of the [bank]'s contractual obligation to provide credit support to the securitization (implicit support):

(1) The [bank] must hold regulatory capital against all of the underlying exposures associated with the securitization as if the exposures had not been securitized and must deduct from tier 1 capital any after-tax gain-on-sale resulting from the securitization; and

(2) The [bank] must disclose publicly:

(i) That it has provided implicit support to the securitization; and

(ii) The regulatory capital impact to the [bank] of providing such implicit support.

(i) *Eligible servicer cash advance facilities.* Regardless of any other provisions of this part, a [bank] is not required to hold risk-based capital against the undrawn portion of an eligible servicer cash advance facility.

(j) *Interest-only mortgage-backed securities.* Regardless of any other provisions of this part, the risk weight for a non-credit-enhancing interest-only mortgage-backed security may not be less than 100 percent.

(k) *Small-business loans and leases on personal property transferred with recourse.* (1) Regardless of any other provisions of this appendix, a [bank] that has transferred small-business loans and leases on personal property (small-business obligations) with recourse must include in risk-weighted assets only the contractual amount of retained recourse if all the following conditions are met:

(i) The transaction is a sale under GAAP.

(ii) The [bank] establishes and maintains, pursuant to GAAP, a non-capital reserve sufficient to meet the [bank]'s reasonably estimated liability under the recourse arrangement.

(iii) The loans and leases are to businesses that meet the criteria for a small-business concern established by the Small Business Administration under section 3(a) of the Small Business Act (15 U.S.C. 632).

(iv) The [bank] is well capitalized, as defined in the [AGENCY]'s prompt corrective action regulation—12 CFR part 6 (for national banks), 12 CFR part 208, subpart D (for state member banks or bank holding companies), 12 CFR part 325, subpart B (for state nonmember banks), and 12 CFR part 565 (for savings associations). For purposes of determining whether a [bank] is well capitalized for purposes of this paragraph, the [bank]'s capital ratios must be calculated without regard to the capital treatment for transfers of small-business obligations with recourse specified in paragraph (k)(1) of this section.

(2) The total outstanding amount of recourse retained by a [bank] on transfers of small-business obligations receiving the capital treatment specified in paragraph (k)(1) of this section cannot exceed 15 percent of the [bank]'s total qualifying capital.

(3) If a [bank] ceases to be well capitalized or exceeds the 15 percent capital limitation, the preferential capital treatment specified in paragraph (k)(1) of this section will continue to apply to any transfers of small-business obligations with recourse that occurred during the time that the [bank] was well capitalized and did not exceed the capital limit.

(4) The risk-based capital ratios of the [bank] must be calculated without regard to the capital treatment for transfers of small-business obligations with recourse specified in paragraph (k)(1) of this section as provided in 12 CFR part 3, Appendix A (for national banks), 12 CFR part 208, Appendix A (for state member banks), 12 CFR part 225, Appendix A (for bank holding companies), 12 CFR part 325, Appendix A (for state nonmember banks), and 12 CFR 567.6(b)(5)(v) (for savings associations).

(l) *Consolidated ABCP programs.* (1) A [bank] that qualifies as a primary beneficiary and must consolidate an ABCP program as a variable interest entity under GAAP may exclude the consolidated ABCP program assets from risk-weighted assets if the [bank] is the sponsor of the ABCP program. If a [bank] excludes such consolidated ABCP program assets from risk-weighted assets, the [bank] must hold risk-based capital against any securitization exposures of the [bank] to the ABCP program in accordance with this part.

(2) If a [bank] either is not permitted, or elects not, to exclude consolidated ABCP program assets from its risk-weighted assets, the [bank] must hold risk-based capital against the consolidated ABCP program assets in accordance with this appendix but is not required to hold risk-based capital against any securitization exposures of the [bank] to the ABCP program.

(m) *N^{th}-to-default credit derivatives*—(1) *First-to-default credit derivatives*—(i) *Protection purchaser.* A [bank] that obtains credit protection on a group of underlying exposures through a first-to-default credit derivative must determine its risk-based capital requirement for the underlying exposures as if the [bank] synthetically securitized the underlying exposure with the lowest risk-based capital requirement and had obtained no credit risk mitigant on the other underlying exposures.

(ii) *Protection provider.* A [bank] that provides credit protection on a group of underlying exposures through a first-to-default credit derivative must determine its risk-weighted asset amount for the derivative by applying the RBA in section 43 of this appendix (if the derivative qualifies for the RBA) or, if the derivative does not qualify for the RBA, by setting its risk-weighted asset amount for the derivative equal to the product of:

(A) The protection amount of the derivative;

(B) 12.5; and

(C) The sum of the risk-based capital requirements of the individual underlying exposures, up to a maximum of 100 percent.

(2) *Second-or-subsequent-to-default credit derivatives*—(i) *Protection purchaser.* (A) A [bank] that obtains credit protection on a group of underlying exposures through a n^{th}-to-default credit derivative (other than a first-to-default credit derivative) may recognize the credit risk mitigation benefits of the derivative only if:

(*1*) The [bank] also has obtained credit protection on the same underlying exposures in the form of first-through-(n-1)-to-default credit derivatives; or

(*2*) If n-1 of the underlying exposures have already defaulted.

(B) If a [bank] satisfies the requirements of paragraph (m)(2)(i)(A) of this section, the [bank] must determine its risk-based capital requirement for the underlying exposures as if the [bank] had only synthetically securitized the underlying exposure with the n^{th} lowest risk-based capital requirement and had obtained no credit risk mitigant on the other underlying exposures.

(ii) *Protection provider.* A [bank] that provides credit protection on a group of underlying exposures through a n^{th}-to-default credit derivative (other than a first-to-default credit derivative) must determine its risk-weighted asset amount for the derivative by applying the RBA in section 43 of this appendix (if the derivative qualifies for the RBA) or, if the derivative does not qualify for the RBA, by setting its risk-weighted asset amount for the derivative equal to the product of:

(A) The protection amount of the derivative;

(B) 12.5; and

(C) The sum of the risk-based capital requirements of the individual underlying exposures (excluding the n-1 underlying exposures with the lowest risk-based capital requirements), up to a maximum of 100 percent.

Section 43. Ratings-Based Approach (RBA)

(a) *Eligibility requirements for use of the RBA*—(1) *Originating [bank].* An originating [bank] must use the RBA to calculate its risk-based capital requirement for a securitization exposure if the exposure has two or more external ratings or inferred ratings (and may not use the RBA if the exposure has fewer than two external ratings or inferred ratings).

(2) *Investing [bank].* An investing [bank] must use the RBA to calculate its risk-based capital requirement for a securitization exposure if the exposure has one or more external or inferred ratings (and may not use the RBA if the exposure has no external or inferred rating).

(b) *Ratings-based approach.* (1) A [bank] must determine the risk-weighted asset amount for a securitization exposure by multiplying the amount of the exposure (as defined in paragraph (e) of section 42 of this appendix) by the appropriate risk weight provided in Table 6 and Table 7.

(2) A [bank] must apply the risk weights in Table 6 when the securitization exposure's applicable external or applicable inferred rating represents a long-term credit rating, and must apply the risk weights in Table 7 when the securitization exposure's applicable external or applicable inferred rating represents a short-term credit rating.

(i) A [bank] must apply the risk weights in column 1 of Table 6 or Table 7 to the securitization exposure if:

(A) N (as calculated under paragraph (e)(6) of section 45 of this appendix) is six or more (for purposes of this section only, if the notional number of underlying exposures is 25 or more or if all of the underlying exposures are retail exposures, a [bank] may assume that N is six or more unless the [bank] knows or has reason to know that N is less than six); and

(B) The securitization exposure is a senior securitization exposure.

(ii) A [bank] must apply the risk weights in column 3 of Table 6 or Table 7 to the securitization exposure if N is less than six, regardless of the seniority of the securitization exposure.

(iii) Otherwise, a [bank] must apply the risk weights in column 2 of Table 6 or Table 7.

TABLE 6.—LONG-TERM CREDIT RATING RISK WEIGHTS UNDER RBA AND IAA

Applicable external or inferred rating (Illustrative rating example)	Column 1	Column 2	Column 3
	Risk weights for senior securitization exposures backed by granular pools	Risk weights for non-senior securitization exposures backed by granular pools	Risk weights for securitization exposures backed by non-granular pools
Highest investment grade (for example, AAA)	7%	12%	20%
Second highest investment grade (for example, AA)	8%	15%	25%
Third-highest investment grade—positive designation (for example, A+)	10%	18%	35%
Third-highest investment grade (for example, A)	12%	20%	
Third-highest investment grade—negative designation (for example, A−)	20%	35%	
Lowest investment grade—positive designation (for example, BBB+)	35%	50%	
Lowest investment grade (for example, BBB)	60%	75%	
Lowest investment grade—negative designation (for example, BBB−)	100%		
One category below investment grade—positive designation (for example, BB+)	250%		
One category below investment grade (for example, BB)	425%		
One category below investment grade—negative designation (for example, BB−)	650%		
More than one category below investment grade	Deduction from tier 1 and tier 2 capital.		

TABLE 7.—SHORT-TERM CREDIT RATING RISK WEIGHTS UNDER RBA AND IAA

Applicable external or inferred rating (Illustrative rating example)	Column 1	Column 2	Column 3
	Risk weights for senior securitization exposures backed by granular pools	Risk weights for non-senior securitization exposures backed by granular pools	Risk weights for securitization exposures backed by non-granular pools
Highest investment grade (for example, A1)	7%	12%	20%
Second highest investment grade (for example, A2)	12%	20%	35%
Third highest investment grade (for example, A3)	60%	75%	75%
All other ratings	Deduction from tier 1 and tier 2 capital.		

Section 44. Internal Assessment Approach (IAA)

(a) *Eligibility requirements.* A [bank] may apply the IAA to calculate the risk-weighted asset amount for a securitization exposure that the [bank] has to an ABCP program (such as a liquidity facility or credit enhancement) if the [bank], the ABCP program, and the exposure qualify for use of the IAA.

(1) *[Bank] qualification criteria.* A [bank] qualifies for use of the IAA if the [bank] has received the prior written approval of the [AGENCY]. To receive such approval, the [bank] must demonstrate to the [AGENCY]'s satisfaction that the [bank]'s internal assessment process meets the following criteria:

(i) The [bank]'s internal credit assessments of securitization exposures must be based on publicly available rating criteria used by an NRSRO.

(ii) The [bank]'s internal credit assessments of securitization exposures used for risk-based capital purposes must be consistent with those used in the [bank]'s internal risk management process, management information reporting systems, and capital adequacy assessment process.

(iii) The [bank]'s internal credit assessment process must have sufficient granularity to identify gradations of risk. Each of the [bank]'s internal credit assessment categories must correspond to an external rating of an NRSRO.

(iv) The [bank]'s internal credit assessment process, particularly the stress test factors for determining credit enhancement requirements, must be at least as conservative as the most conservative of the publicly available rating criteria of the NRSROs that have provided external ratings to the commercial paper issued by the ABCP program.

(A) Where the commercial paper issued by an ABCP program has an external rating from two or more NRSROs and the different NRSROs'' benchmark stress factors require different levels of credit enhancement to achieve the same external rating equivalent, the [bank] must apply the NRSRO stress factor that requires the highest level of credit enhancement.

(B) If any NRSRO that provides an external rating to the ABCP program's commercial paper changes its methodology (including stress factors), the [bank] must evaluate whether to revise its internal assessment process.

(v) The [bank] must have an effective system of controls and oversight that ensures compliance with these operational requirements and maintains the integrity and accuracy of the internal credit assessments. The [bank] must have an internal audit function independent from the ABCP program business line and internal credit assessment process that assesses at least annually whether the controls over the internal credit assessment process function as intended.

(vi) The [bank] must review and update each internal credit assessment whenever new material information is available, but no less frequently than annually.

(vii) The [bank] must validate its internal credit assessment process on an ongoing basis and at least annually.

(2) *ABCP-program qualification criteria.* An ABCP program qualifies for use of the IAA if all commercial paper issued by the ABCP program has an external rating.

(3) *Exposure qualification criteria.* A securitization exposure qualifies for use of the IAA if the exposure meets the following criteria:

(i) The [bank] initially rated the exposure at least the equivalent of investment grade.

(ii) The ABCP program has robust credit and investment guidelines (that is, underwriting standards) for the exposures underlying the securitization exposure.

(iii) The ABCP program performs a detailed credit analysis of the sellers of the exposures underlying the securitization exposure.

(iv) The ABCP program's underwriting policy for the exposures underlying the securitization exposure establishes minimum asset eligibility criteria that include the prohibition of the purchase of assets that are significantly past due or of assets that are defaulted (that is, assets that have been charged off or written down by the seller prior to being placed into the ABCP program or assets that would be charged off or written down under the program's governing contracts), as well as limitations on concentration to individual obligors or geographic areas and the tenor of the assets to be purchased.

(v) The aggregate estimate of loss on the exposures underlying the securitization exposure considers all sources of potential risk, such as credit and dilution risk.

(vi) Where relevant, the ABCP program incorporates structural features into each purchase of exposures underlying the securitization exposure to mitigate potential credit deterioration of the underlying exposures. Such features may include wind-down triggers specific to a pool of underlying exposures.

(b) *Mechanics.* A [bank] that elects to use the IAA to calculate the risk-based capital requirement for any securitization exposure must use the IAA to calculate the risk-based capital requirements for all securitization exposures that qualify for the IAA approach. Under the IAA, a [bank] must map its internal assessment of such a securitization exposure to an equivalent external rating from an NRSRO. Under the IAA, a [bank] must determine the risk-weighted asset amount for such a securitization exposure by multiplying the amount of the exposure (as defined in paragraph (e) of section 42 of this appendix) by the appropriate risk weight in Table 6 and Table 7 in paragraph (b) of section 43 of this appendix.

Section 45. Supervisory Formula Approach (SFA)

(a) *Eligibility requirements.* A [bank] may use the SFA to determine its risk-based capital requirement for a securitization exposure only if the [bank] can calculate on an ongoing basis each of the SFA parameters in paragraph (e) of this section.

(b) *Mechanics.* Under the SFA, a securitization exposure incurs a deduction from total capital (as described in paragraph (c) of section 42 of this appendix) and/or an SFA risk-based capital requirement, as determined in paragraph (c) of this section. The risk-weighted asset amount for the securitization exposure equals the SFA risk-based capital requirement for the exposure multiplied by 12.5.

(c) *The SFA risk-based capital requirement.* (1) If K_{IRB} is greater than or equal to L + T, the entire exposure must be deducted from total capital.

(2) If K_{IRB} is less than or equal to L, the exposure's SFA risk-based capital requirement is UE multiplied by TP multiplied by the greater of:

(i) 0.0056 * T; or

(ii) S[L + T] − S[L].

(3) If K_{IRB} is greater than L and less than L + T, the [bank] must deduct from total capital an amount equal to UE*TP*(K_{IRB} − L), and the exposure's SFA risk-based capital requirement is UE multiplied by TP multiplied by the greater of:

(i) 0.0056 * (T − (K_{IRB} − L)); or

(ii) S[L + T] − S[K_{IRB}].

(d) *The supervisory formula:*

$$(1)\ S[Y]=\begin{cases} Y & \text{when } Y \le K_{IRB} \\ K_{IRB}+K[Y]-K[K_{IRB}]+\dfrac{d\cdot K_{IRB}}{20}\left(1-e^{\frac{20\cdot(K_{IRB}-Y)}{K_{IRB}}}\right) & \text{when } Y > K_{IRB} \end{cases}$$

$$(2)\ K[Y]=(1-h)\cdot\left[\left(1-\beta[Y;a,b]\right)\cdot Y+\beta[Y;a+1,b]\cdot c\right]$$

$$(3)\ h=\left(1-\frac{K_{IRB}}{EWALGD}\right)^{N}$$

$$(4)\ a=g\cdot c$$

$$(5)\ b=g\cdot(1-c)$$

$$(6)\ c=\frac{K_{IRB}}{1-h}$$

$$(7)\ g=\frac{(1-c)\cdot c}{f}-1$$

$$(8)\ f=\frac{v+K_{IRB}{}^{2}}{1-h}-c^{2}+\frac{(1-K_{IRB})\cdot K_{IRB}-v}{(1-h)\cdot 1000}$$

$$(9)\ v=K_{IRB}\cdot\frac{(EWALGD-K_{IRB})+.25\cdot(1-EWALGD)}{N}$$

$$(10)\ d=1-(1-h)\cdot(1-\beta[K_{IRB};a,b]).$$

(11) In these expressions, β[Y; a, b] refers to the cumulative beta distribution with parameters a and b evaluated at Y. In the case where N = 1 and EWALGD = 100 percent, S[Y] in formula (1) must be calculated with K[Y] set equal to the product of K_{IRB} and Y, and d set equal to $1 - K_{IRB}$.

(e) *SFA parameters*—(1) *Amount of the underlying exposures (UE).* UE is the EAD of any underlying exposures that are wholesale and retail exposures (including the amount of any funded spread accounts, cash collateral accounts, and other similar funded credit enhancements) plus the amount of any underlying exposures that are securitization exposures (as defined in paragraph (e) of section 42 of this appendix) plus the adjusted carrying value of any underlying exposures that are equity exposures (as defined in paragraph (b) of section 51 of this appendix).

(2) *Tranche percentage (TP).* TP is the ratio of the amount of the [bank]'s securitization exposure to the amount of the tranche that contains the securitization exposure.

(3) *Capital requirement on underlying exposures (K_{IRB}).* (i) K_{IRB} is the ratio of:

(A) The sum of the risk-based capital requirements for the underlying exposures plus the expected credit losses of the underlying exposures (as determined under this appendix as if the underlying exposures were directly held by the [bank]); to

(B) UE.

(ii) The calculation of K_{IRB} must reflect the effects of any credit risk mitigant applied to the underlying exposures (either to an individual underlying exposure, to a group of underlying exposures, or to the entire pool of underlying exposures).

(iii) All assets related to the securitization are treated as underlying exposures, including assets in a reserve account (such as a cash collateral account).

(4) *Credit enhancement level (L).* (i) L is the ratio of:

(A) The amount of all securitization exposures subordinated to the tranche that contains the [bank]'s securitization exposure; to

(B) UE.

(ii) A [bank] must determine L before considering the effects of any tranche-specific credit enhancements.

(iii) Any gain-on-sale or CEIO associated with the securitization may not be included in L.

(iv) Any reserve account funded by accumulated cash flows from the underlying exposures that is subordinated to the tranche that contains the [bank]'s securitization exposure may be included in the numerator and denominator of L to the extent cash has accumulated in the account. Unfunded reserve accounts (that is, reserve accounts that are to be funded from future cash flows from the underlying exposures) may not be included in the calculation of L.

(v) In some cases, the purchase price of receivables will reflect a discount that provides credit enhancement (for example, first loss protection) for all or certain tranches of the securitization. When this arises, L should be calculated inclusive of this discount if the discount provides credit enhancement for the securitization exposure.

(5) *Thickness of tranche (T).* T is the ratio of:

(i) The amount of the tranche that contains the [bank]'s securitization exposure; to

(ii) UE.

(6) *Effective number of exposures (N).* (i) Unless the [bank] elects to use the formula provided in paragraph (f) of this section,

$$N = \frac{(\sum_i EAD_i)^2}{\sum_i EAD_i^2}$$

where EAD_i represents the EAD associated with the ith instrument in the pool of underlying exposures.

(ii) Multiple exposures to one obligor must be treated as a single underlying exposure.

(iii) In the case of a re-securitization (that is, a securitization in which some or all of the underlying exposures are themselves securitization exposures), the [bank] must treat each underlying exposure as a single underlying exposure and must not look through to the originally securitized underlying exposures.

(7) *Exposure-weighted average loss given default (EWALGD).* EWALGD is calculated as:

$$EWALGD = \frac{\sum_i LGD_i \cdot EAD_i}{\sum_i EAD_i}$$

where LGD_i represents the average LGD associated with all exposures to the ith obligor. In the case of a re-securitization, an LGD of 100 percent must be assumed for the underlying exposures that are themselves securitization exposures.

(f) *Simplified method for computing N and EWALGD.* (1) If all underlying exposures of a securitization are retail exposures, a [bank] may apply the SFA using the following simplifications:

(i) h = 0; and

(ii) v = 0.

(2) Under the conditions in paragraphs (f)(3) and (f)(4) of this section, a [bank] may employ a simplified method for calculating N and EWALGD.

(3) If C_1 is no more than 0.03, a [bank] may set EWALGD = 0.50 if none of the underlying exposures is a securitization exposure or EWALGD = 1 if one or more of the underlying exposures is a securitization exposure, and may set N equal to the following amount:

$$N = \frac{1}{C_1 C_m + \left(\frac{C_m - C_1}{m-1}\right)\max(1 - mC_1, 0)}$$

where:

(i) C_m is the ratio of the sum of the amounts of the 'm' largest underlying exposures to UE; and

(ii) The level of m is to be selected by the [bank].

(4) Alternatively, if only C_1 is available and C_1 is no more than 0.03, the [bank] may set EWALGD = 0.50 if none of the underlying exposures is a securitization exposure or EWALGD = 1 if one or more of the underlying exposures is a securitization exposure and may set $N = 1/C_1$.

Section 46. Recognition of Credit Risk Mitigants for Securitization Exposures

(a) *General.* An originating [bank] that has obtained a credit risk mitigant to hedge its securitization exposure to a synthetic or traditional securitization that satisfies the operational criteria in section 41 of this appendix may recognize the credit risk mitigant, but only as provided in this section. An investing [bank] that has obtained a credit risk mitigant to hedge a securitization exposure may recognize the credit risk mitigant, but only as provided in this section. A [bank] that has used the RBA in section 43 of this appendix or the IAA in section 44 of this appendix to calculate its risk-based capital requirement for a securitization exposure whose external or inferred rating (or equivalent internal rating under the IAA) reflects the benefits of a credit risk mitigant provided to the associated securitization or that supports some or all of the underlying exposures may not use the credit risk mitigation rules in this section to further reduce its risk-based capital requirement for the exposure to reflect that credit risk mitigant.

(b) *Collateral*—(1) *Rules of recognition.* A [bank] may recognize financial collateral in determining the [bank]'s risk-based capital requirement for a securitization exposure (other than a repo-style transaction, an eligible margin loan, or an OTC derivative contract for which the [bank] has reflected collateral in its determination of exposure amount under section 32 of this appendix) as follows. The [bank]'s risk-based capital requirement for the collateralized securitization exposure is equal to the risk-based capital requirement for the securitization exposure as calculated under the RBA in section 43 of this appendix or under the SFA in section 45 of this appendix multiplied by the ratio of adjusted exposure amount (SE*) to original exposure amount (SE), where:

(i) SE* = max {0, [SE—C x (1 − Hs − Hfx)]};

(ii) SE = the amount of the securitization exposure calculated under paragraph (e) of section 42 of this appendix;

(iii) C = the current market value of the collateral;

(iv) Hs = the haircut appropriate to the collateral type; and

(v) Hfx = the haircut appropriate for any currency mismatch between the collateral and the exposure.

(2) *Mixed collateral.* Where the collateral is a basket of different asset types or a basket of assets denominated in different currencies, the haircut on the basket will be

$$H = \sum_i a_i H_i,$$

where a_i is the current market value of the asset in the basket divided by the current market value of all assets in the basket and H_i is the haircut applicable to that asset.

(3) *Standard supervisory haircuts.* Unless a [bank] qualifies for use of and uses own-estimates haircuts in paragraph (b)(4) of this section:

(i) A [bank] must use the collateral type haircuts (Hs) in Table 3;

(ii) A [bank] must use a currency mismatch haircut (Hfx) of 8 percent if the exposure and the collateral are denominated in different currencies;

(iii) A [bank] must multiply the supervisory haircuts obtained in paragraphs (b)(3)(i) and (ii) by the square root of 6.5 (which equals 2.549510); and

(iv) A [bank] must adjust the supervisory haircuts upward on the basis of a holding period longer than 65 business days where and as appropriate to take into account the illiquidity of the collateral.

(4) *Own estimates for haircuts.* With the prior written approval of the [AGENCY], a [bank] may calculate haircuts using its own internal estimates of market price volatility and foreign exchange volatility, subject to paragraph (b)(2)(iii) of section 32 of this appendix. The minimum holding period (TM) for securitization exposures is 65 business days.

(c) *Guarantees and credit derivatives*—(1) *Limitations on recognition.* A [bank] may only recognize an eligible guarantee or eligible credit derivative provided by an eligible securitization guarantor in determining the [bank]'s risk-based capital requirement for a securitization exposure.

(2) *ECL for securitization exposures.* When a [bank] recognizes an eligible guarantee or eligible credit derivative provided by an eligible securitization guarantor in determining the [bank]'s risk-based capital requirement for a securitization exposure, the [bank] must also:

(i) Calculate ECL for the protected portion of the exposure using the same risk parameters that it uses for calculating the risk-weighted asset amount of the exposure as described in paragraph (c)(3) of this section; and

(ii) Add the exposure's ECL to the [bank]'s total ECL.

(3) *Rules of recognition.* A [bank] may recognize an eligible guarantee or eligible credit derivative provided by an eligible securitization guarantor in determining the

[bank]'s risk-based capital requirement for the securitization exposure as follows:

(i) *Full coverage.* If the protection amount of the eligible guarantee or eligible credit derivative equals or exceeds the amount of the securitization exposure, the [bank] may set the risk-weighted asset amount for the securitization exposure equal to the risk-weighted asset amount for a direct exposure to the eligible securitization guarantor (as determined in the wholesale risk weight function described in section 31 of this appendix), using the [bank]'s PD for the guarantor, the [bank]'s LGD for the guarantee or credit derivative, and an EAD equal to the amount of the securitization exposure (as determined in paragraph (e) of section 42 of this appendix).

(ii) *Partial coverage.* If the protection amount of the eligible guarantee or eligible credit derivative is less than the amount of the securitization exposure, the [bank] may set the risk-weighted asset amount for the securitization exposure equal to the sum of:

(A) *Covered portion.* The risk-weighted asset amount for a direct exposure to the eligible securitization guarantor (as determined in the wholesale risk weight function described in section 31 of this appendix), using the [bank]'s PD for the guarantor, the [bank]'s LGD for the guarantee or credit derivative, and an EAD equal to the protection amount of the credit risk mitigant; and

(B) *Uncovered portion.* (1) 1.0 minus the ratio of the protection amount of the eligible guarantee or eligible credit derivative to the amount of the securitization exposure); multiplied by

(*2*) The risk-weighted asset amount for the securitization exposure without the credit risk mitigant (as determined in sections 42–45 of this appendix).

(4) *Mismatches.* The [bank] must make applicable adjustments to the protection amount as required in paragraphs (d), (e), and (f) of section 33 of this appendix for any hedged securitization exposure and any more senior securitization exposure that benefits from the hedge. In the context of a synthetic securitization, when an eligible guarantee or eligible credit derivative covers multiple hedged exposures that have different residual maturities, the [bank] must use the longest residual maturity of any of the hedged exposures as the residual maturity of all the hedged exposures.

Section 47. Risk-Based Capital Requirement for Early Amortization Provisions

(a) *General.* (1) An originating [bank] must hold risk-based capital against the sum of the originating [bank]'s interest and the investors' interest in a securitization that:

(i) Includes one or more underlying exposures in which the borrower is permitted to vary the drawn amount within an agreed limit under a line of credit; and

(ii) Contains an early amortization provision.

(2) For securitizations described in paragraph (a)(1) of this section, an originating [bank] must calculate the risk-based capital requirement for the originating [bank]'s interest under sections 42–45 of this appendix, and the risk-based capital requirement for the investors' interest under paragraph (b) of this section.

(b) *Risk-weighted asset amount for investors' interest.* The originating [bank]'s risk-weighted asset amount for the investors' interest in the securitization is equal to the product of the following 5 quantities:

(1) The investors' interest EAD;

(2) The appropriate conversion factor in paragraph (c) of this section;

(3) K_{IRB} (as defined in paragraph (e)(3) of section 45 of this appendix);

(4) 12.5; and

(5) The proportion of the underlying exposures in which the borrower is permitted to vary the drawn amount within an agreed limit under a line of credit.

(c) *Conversion factor.* (1) (i) Except as provided in paragraph (c)(2) of this section, to calculate the appropriate conversion factor, a [bank] must use Table 8 for a securitization that contains a controlled early amortization provision and must use Table 9 for a securitization that contains a non-controlled early amortization provision. In circumstances where a securitization contains a mix of retail and nonretail exposures or a mix of committed and uncommitted exposures, a [bank] may take a pro rata approach to determining the conversion factor for the securitization's early amortization provision. If a pro rata approach is not feasible, a [bank] must treat the mixed securitization as a securitization of nonretail exposures if a single underlying exposure is a nonretail exposure and must treat the mixed securitization as a securitization of committed exposures if a single underlying exposure is a committed exposure.

(ii) To find the appropriate conversion factor in the tables, a [bank] must divide the three-month average annualized excess spread of the securitization by the excess spread trapping point in the securitization structure. In securitizations that do not require excess spread to be trapped, or that specify trapping points based primarily on performance measures other than the three-month average annualized excess spread, the excess spread trapping point is 4.5 percent.

TABLE 8.—CONTROLLED EARLY AMORTIZATION PROVISIONS

	Uncommitted	Committed
Retail Credit Lines	Three-month average annualized excess spread Conversion Factor (CF) 133.33% of trapping point or more, 0% CF. less than 133.33% to 100% of trapping point, 1% CF. less than 100% to 75% of trapping point, 2% CF. less than 75% to 50% of trapping point, 10% CF. less than 50% to 25% of trapping point, 20% CF. less than 25% of trapping point, 40% CF.	90% CF
Non-retail Credit Lines	90% CF	90% CF

TABLE 9.—NON-CONTROLLED EARLY AMORTIZATION PROVISIONS

	Uncommitted	Committed
Retail Credit Lines	Three-month average annualized excess spread Conversion Factor (CF) 133.33% of trapping point or more, 0% CF. less than 133.33% to 100% of trapping point, 5% CF. less than 100% to 75% of trapping point, 15% CF. less than 75% to 50% of trapping point, 50% CF. less than 50% of trapping point, 100% CF.	100% CF
Non-retail Credit Lines	100% CF	100% CF

(2) For a securitization for which all or substantially all of the underlying exposures are residential mortgage exposures, a [bank] may calculate the appropriate conversion factor using paragraph (c)(1) of this section or may use a conversion factor of 10 percent. If the [bank] chooses to use a conversion factor of 10 percent, it must use that conversion factor for all securitizations for which all or substantially all of the underlying exposures are residential mortgage exposures.

Part VI. Risk-Weighted Assets for Equity Exposures

Section 51. Introduction and Exposure Measurement

(a) *General.* To calculate its risk-weighted asset amounts for equity exposures that are not equity exposures to investment funds, a [bank] may apply either the Simple Risk Weight Approach (SRWA) in section 52 of this appendix or, if it qualifies to do so, the Internal Models Approach (IMA) in section 53 of this appendix. A [bank] must use the look-through approaches in section 54 of this appendix to calculate its risk-weighted asset amounts for equity exposures to investment funds.

(b) *Adjusted carrying value.* For purposes of this part, the adjusted carrying value of an equity exposure is:

(1) For the on-balance sheet component of an equity exposure, the [bank]'s carrying value of the exposure reduced by any unrealized gains on the exposure that are reflected in such carrying value but excluded from the [bank]'s tier 1 and tier 2 capital; and

(2) For the off-balance sheet component of an equity exposure, the effective notional principal amount of the exposure, the size of which is equivalent to a hypothetical on-balance sheet position in the underlying equity instrument that would evidence the same change in fair value (measured in dollars) for a given small change in the price of the underlying equity instrument, minus the adjusted carrying value of the on-balance sheet component of the exposure as calculated in paragraph (b)(1) of this section. For unfunded equity commitments that are unconditional, the effective notional principal amount is the notional amount of the commitment. For unfunded equity commitments that are conditional, the effective notional principal amount is the [bank]'s best estimate of the amount that would be funded under economic downturn conditions.

Section 52. Simple Risk Weight Approach (SRWA)

(a) *General.* Under the SRWA, a [bank]'s aggregate risk-weighted asset amount for its equity exposures is equal to the sum of the risk-weighted asset amounts for each of the [bank]'s individual equity exposures (other than equity exposures to an investment fund) as determined in this section and the risk-weighted asset amounts for each of the [bank]'s individual equity exposures to an investment fund as determined in section 54 of this appendix.

(b) *SRWA computation for individual equity exposures.* A [bank] must determine the risk-weighted asset amount for an individual equity exposure (other than an equity exposure to an investment fund) by multiplying the adjusted carrying value of the equity exposure or the effective portion and ineffective portion of a hedge pair (as defined in paragraph (c) of this section) by the lowest applicable risk weight in this paragraph (b).

(1) *0 percent risk weight equity exposures.* An equity exposure to an entity whose credit exposures are exempt from the 0.03 percent PD floor in paragraph (d)(2) of section 31 of this appendix is assigned a 0 percent risk weight.

(2) *20 percent risk weight equity exposures.* An equity exposure to a Federal Home Loan Bank or Farmer Mac is assigned a 20 percent risk weight.

(3) *100 percent risk weight equity exposures.* The following equity exposures are assigned a 100 percent risk weight:

(i) *Community development equity exposures.* An equity exposure that qualifies as a community development investment under 12 U.S.C. 24 (Eleventh), excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a consolidated small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682).

(ii) *Effective portion of hedge pairs.* The effective portion of a hedge pair.

(iii) *Non-significant equity exposures.* Equity exposures, excluding exposures to an investment firm that would meet the definition of a traditional securitization were it not for the [AGENCY]'s application of paragraph (8) of that definition and has greater than immaterial leverage, to the extent that the aggregate adjusted carrying value of the exposures does not exceed 10 percent of the [bank]'s tier 1 capital plus tier 2 capital.

(A) To compute the aggregate adjusted carrying value of a [bank]'s equity exposures for purposes of this paragraph (b)(3)(iii), the [bank] may exclude equity exposures described in paragraphs (b)(1), (b)(2), (b)(3)(i), and (b)(3)(ii) of this section, the equity exposure in a hedge pair with the smaller adjusted carrying value, and a proportion of each equity exposure to an investment fund equal to the proportion of the assets of the investment fund that are not equity exposures or that meet the criterion of paragraph (b)(3)(i) of this section. If a [bank] does not know the actual holdings of the investment fund, the [bank] may calculate the proportion of the assets of the fund that are not equity exposures based on the terms of the prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. If the sum of the investment limits for all exposure classes within the fund exceeds 100 percent, the [bank] must assume for purposes of this paragraph (b)(3)(iii) that the investment fund invests to the maximum extent possible in equity exposures.

(B) When determining which of a [bank]'s equity exposures qualify for a 100 percent risk weight under this paragraph, a [bank] first must include equity exposures to unconsolidated small business investment companies or held through consolidated small business investment companies described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682), then must include publicly traded equity exposures (including those held indirectly through investment funds), and then must include non-publicly traded equity exposures (including those held indirectly through investment funds).

(4) *300 percent risk weight equity exposures.* A publicly traded equity exposure (other than an equity exposure described in paragraph (b)(6) of this section and including the ineffective portion of a hedge pair) is assigned a 300 percent risk weight.

(5) *400 percent risk weight equity exposures.* An equity exposure (other than an equity exposure described in paragraph (b)(6) of this section) that is not publicly traded is assigned a 400 percent risk weight.

(6) *600 percent risk weight equity exposures.* An equity exposure to an investment firm that:

(i) Would meet the definition of a traditional securitization were it not for the [AGENCY]'s application of paragraph (8) of that definition; and

(ii) Has greater than immaterial leverage is assigned a 600 percent risk weight.

(c) *Hedge transactions*—(1) *Hedge pair.* A hedge pair is two equity exposures that form an effective hedge so long as each equity exposure is publicly traded or has a return that is primarily based on a publicly traded equity exposure.

(2) *Effective hedge.* Two equity exposures form an effective hedge if the exposures either have the same remaining maturity or each has a remaining maturity of at least three months; the hedge relationship is formally documented in a prospective manner (that is, before the [bank] acquires at least one of the equity exposures); the documentation specifies the measure of effectiveness (E) the [bank] will use for the hedge relationship throughout the life of the transaction; and the hedge relationship has an E greater than or equal to 0.8. A [bank] must measure E at least quarterly and must use one of three alternative measures of E:

(i) Under the dollar-offset method of measuring effectiveness, the [bank] must determine the ratio of value change (RVC). The RVC is the ratio of the cumulative sum of the periodic changes in value of one equity exposure to the cumulative sum of the periodic changes in the value of the other equity exposure. If RVC is positive, the hedge is not effective and E equals 0. If RVC is negative and greater than or equal to -1 (that is, between zero and -1), then E equals the absolute value of RVC. If RVC is negative and less than -1, then E equals 2 plus RVC.

(ii) Under the variability-reduction method of measuring effectiveness:

$$E = 1 - \frac{\sum_{t=1}^{T}\left(X_t - X_{t-1}\right)^2}{\sum_{t=1}^{T}\left(A_t - A_{t-1}\right)^2}, \text{ where}$$

(A) $X_t = A_t - B_t$;
(B) A_t = the value at time t of one exposure in a hedge pair; and
(C) B_t = the value at time t of the other exposure in a hedge pair.

(iii) Under the regression method of measuring effectiveness, E equals the coefficient of determination of a regression in which the change in value of one exposure in a hedge pair is the dependent variable and the change in value of the other exposure in a hedge pair is the independent variable. However, if the estimated regression coefficient is positive, then the value of E is zero.

(3) The effective portion of a hedge pair is E multiplied by the greater of the adjusted carrying values of the equity exposures forming a hedge pair.

(4) The ineffective portion of a hedge pair is (1–E) multiplied by the greater of the adjusted carrying values of the equity exposures forming a hedge pair.

Section 53. Internal Models Approach (IMA)

(a) *General.* A [bank] may calculate its risk-weighted asset amount for equity exposures using the IMA by modeling publicly traded and non-publicly traded equity exposures (in accordance with paragraph (c) of this section) or by modeling only publicly traded equity exposures (in accordance with paragraph (d) of this section).

(b) *Qualifying criteria.* To qualify to use the IMA to calculate risk-based capital requirements for equity exposures, a [bank] must receive prior written approval from the [AGENCY]. To receive such approval, the [bank] must demonstrate to the [AGENCY]'s satisfaction that the [bank] meets the following criteria:

(1) The [bank] must have one or more models that:

(i) Assess the potential decline in value of its modeled equity exposures;

(ii) Are commensurate with the size, complexity, and composition of the [bank]'s modeled equity exposures; and

(iii) Adequately capture both general market risk and idiosyncratic risk.

(2) The [bank]'s model must produce an estimate of potential losses for its modeled equity exposures that is no less than the estimate of potential losses produced by a VaR methodology employing a 99.0 percent, one-tailed confidence interval of the distribution of quarterly returns for a benchmark portfolio of equity exposures comparable to the [bank]'s modeled equity exposures using a long-term sample period.

(3) The number of risk factors and exposures in the sample and the data period used for quantification in the [bank]'s model and benchmarking exercise must be sufficient to provide confidence in the accuracy and robustness of the [bank]'s estimates.

(4) The [bank]'s model and benchmarking process must incorporate data that are relevant in representing the risk profile of the [bank]'s modeled equity exposures, and must include data from at least one equity market cycle containing adverse market movements relevant to the risk profile of the [bank]'s modeled equity exposures. In addition, the [bank]'s benchmarking exercise must be based on daily market prices for the benchmark portfolio. If the [bank]'s model uses a scenario methodology, the [bank] must demonstrate that the model produces a conservative estimate of potential losses on the [bank]'s modeled equity exposures over a relevant long-term market cycle. If the [bank] employs risk factor models, the [bank] must demonstrate through empirical analysis the appropriateness of the risk factors used.

(5) The [bank] must be able to demonstrate, using theoretical arguments and empirical evidence, that any proxies used in the modeling process are comparable to the [bank]'s modeled equity exposures and that the [bank] has made appropriate adjustments for differences. The [bank] must derive any proxies for its modeled equity exposures and benchmark portfolio using historical market data that are relevant to the [bank]'s modeled equity exposures and benchmark portfolio (or, where not, must use appropriately adjusted data), and such proxies must be robust estimates of the risk of the [bank]'s modeled equity exposures.

(c) *Risk-weighted assets calculation for a [bank] modeling publicly traded and non-publicly traded equity exposures.* If a [bank] models publicly traded and non-publicly traded equity exposures, the [bank]'s aggregate risk-weighted asset amount for its equity exposures is equal to the sum of:

(1) The risk-weighted asset amount of each equity exposure that qualifies for a 0 percent, 20 percent, or 100 percent risk weight under paragraphs (b)(1) through (b)(3)(i) of section 52 (as determined under section 52 of this appendix) and each equity exposure to an investment fund (as determined under section 54 of this appendix); and

(2) The greater of:

(i) The estimate of potential losses on the [bank]'s equity exposures (other than equity exposures referenced in paragraph (c)(1) of this section) generated by the [bank]'s internal equity exposure model multiplied by 12.5; or

(ii) The sum of:

(A) 200 percent multiplied by the aggregate adjusted carrying value of the [bank]'s publicly traded equity exposures that do not belong to a hedge pair, do not qualify for a 0 percent, 20 percent, or 100 percent risk weight under paragraphs (b)(1) through (b)(3)(i) of section 52 of this appendix, and are not equity exposures to an investment fund;

(B) 200 percent multiplied by the aggregate ineffective portion of all hedge pairs; and

(C) 300 percent multiplied by the aggregate adjusted carrying value of the [bank]'s equity exposures that are not publicly traded, do not qualify for a 0 percent, 20 percent, or 100 percent risk weight under paragraphs (b)(1) through (b)(3)(i) of section 52 of this appendix, and are not equity exposures to an investment fund.

(d) *Risk-weighted assets calculation for a [bank] using the IMA only for publicly traded equity exposures.* If a [bank] models only publicly traded equity exposures, the [bank]'s aggregate risk-weighted asset amount for its equity exposures is equal to the sum of:

(1) The risk-weighted asset amount of each equity exposure that qualifies for a 0 percent, 20 percent, or 100 percent risk weight under paragraphs (b)(1) through (b)(3)(i) of section 52 (as determined under section 52 of this appendix), each equity exposure that qualifies for a 400 percent risk weight under paragraph (b)(5) of section 52 or a 600 percent risk weight under paragraph (b)(6) of section 52 (as determined under section 52 of this appendix), and each equity exposure to an investment fund (as determined under section 54 of this appendix); and

(2) The greater of:

(i) The estimate of potential losses on the [bank]'s equity exposures (other than equity exposures referenced in paragraph (d)(1) of this section) generated by the [bank]'s internal equity exposure model multiplied by 12.5; or

(ii) The sum of:

(A) 200 percent multiplied by the aggregate adjusted carrying value of the [bank]'s publicly traded equity exposures that do not belong to a hedge pair, do not qualify for a 0 percent, 20 percent, or 100 percent risk weight under paragraphs (b)(1) through (b)(3)(i) of section 52 of this appendix, and are not equity exposures to an investment fund; and

(B) 200 percent multiplied by the aggregate ineffective portion of all hedge pairs.

Section 54. Equity Exposures to Investment Funds

(a) *Available approaches.* (1) Unless the exposure meets the requirements for a community development equity exposure in paragraph (b)(3)(i) of section 52 of this appendix, a [bank] must determine the risk-weighted asset amount of an equity exposure to an investment fund under the Full Look-Through Approach in paragraph (b) of this section, the Simple Modified Look-Through Approach in paragraph (c) of this section, the Alternative Modified Look-Through Approach in paragraph (d) of this section, or, if the investment fund qualifies for the Money Market Fund Approach, the Money Market Fund Approach in paragraph (e) of this section.

(2) The risk-weighted asset amount of an equity exposure to an investment fund that

meets the requirements for a community development equity exposure in paragraph (b)(3)(i) of section 52 of this appendix is its adjusted carrying value.

(3) If an equity exposure to an investment fund is part of a hedge pair and the [bank] does not use the Full Look-Through Approach, the [bank] may use the ineffective portion of the hedge pair as determined under paragraph (c) of section 52 of this appendix as the adjusted carrying value for the equity exposure to the investment fund. The risk-weighted asset amount of the effective portion of the hedge pair is equal to its adjusted carrying value.

(b) *Full Look-Through Approach.* A [bank] that is able to calculate a risk-weighted asset amount for its proportional ownership share of each exposure held by the investment fund (as calculated under this appendix as if the proportional ownership share of each exposure were held directly by the [bank]) may either:

(1) Set the risk-weighted asset amount of the [bank]'s exposure to the fund equal to the product of:

(i) The aggregate risk-weighted asset amounts of the exposures held by the fund as if they were held directly by the [bank]; and

(ii) The [bank]'s proportional ownership share of the fund; or

(2) Include the [bank]'s proportional ownership share of each exposure held by the fund in the [bank]'s IMA.

(c) *Simple Modified Look-Through Approach.* Under this approach, the risk-weighted asset amount for a [bank]'s equity exposure to an investment fund equals the adjusted carrying value of the equity exposure multiplied by the highest risk weight in Table 10 that applies to any exposure the fund is permitted to hold under its prospectus, partnership agreement, or similar contract that defines the fund's permissible investments (excluding derivative contracts that are used for hedging rather than speculative purposes and that do not constitute a material portion of the fund's exposures).

TABLE 10.—MODIFIED LOOK-THROUGH APPROACHES FOR EQUITY EXPOSURES TO INVESTMENT FUNDS

Risk weight	Exposure class
0 percent	Sovereign exposures with a long-term applicable external rating in the highest investment-grade rating category and sovereign exposures of the United States.
20 percent	Non-sovereign exposures with a long-term applicable external rating in the highest or second-highest investment-grade rating category; exposures with a short-term applicable external rating in the highest investment-grade rating category; and exposures to, or guaranteed by, depository institutions, foreign banks (as defined in 12 CFR 211.2), or securities firms subject to consolidated supervision and regulation comparable to that imposed on U.S. securities broker-dealers that are repo-style transactions or bankers' acceptances.
50 percent	Exposures with a long-term applicable external rating in the third-highest investment-grade rating category or a short-term applicable external rating in the second-highest investment-grade rating category.
100 percent	Exposures with a long-term or short-term applicable external rating in the lowest investment-grade rating category.
200 percent	Exposures with a long-term applicable external rating one rating category below investment grade.
300 percent	Publicly traded equity exposures.
400 percent	Non-publicly traded equity exposures; exposures with a long-term applicable external rating two rating categories or more below investment grade; and exposures without an external rating (excluding publicly traded equity exposures).
1,250 percent	OTC derivative contracts and exposures that must be deducted from regulatory capital or receive a risk weight greater than 400 percent under this appendix.

(d) *Alternative Modified Look-Through Approach.* Under this approach, a [bank] may assign the adjusted carrying value of an equity exposure to an investment fund on a pro rata basis to different risk weight categories in Table 10 based on the investment limits in the fund's prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. The risk-weighted asset amount for the [bank]'s equity exposure to the investment fund equals the sum of each portion of the adjusted carrying value assigned to an exposure class multiplied by the applicable risk weight. If the sum of the investment limits for exposure classes within the fund exceeds 100 percent, the [bank] must assume that the fund invests to the maximum extent permitted under its investment limits in the exposure class with the highest risk weight under Table 10, and continues to make investments in order of the exposure class with the next highest risk weight under Table 10 until the maximum total investment level is reached. If more than one exposure class applies to an exposure, the [bank] must use the highest applicable risk weight. A [bank] may exclude derivative contracts held by the fund that are used for hedging rather than for speculative purposes and do not constitute a material portion of the fund's exposures.

(e) *Money Market Fund Approach.* The risk-weighted asset amount for a [bank]'s equity exposure to an investment fund that is a money market fund subject to 17 CFR 270.2a–7 and that has an applicable external rating in the highest investment-grade rating category equals the adjusted carrying value of the equity exposure multiplied by 7 percent.

Section 55. Equity Derivative Contracts

Under the IMA, in addition to holding risk-based capital against an equity derivative contract under this part, a [bank] must hold risk-based capital against the counterparty credit risk in the equity derivative contract by also treating the equity derivative contract as a wholesale exposure and computing a supplemental risk-weighted asset amount for the contract under part IV. Under the SRWA, a [bank] may choose not to hold risk-based capital against the counterparty credit risk of equity derivative contracts, as long as it does so for all such contracts. Where the equity derivative contracts are subject to a qualified master netting agreement, a [bank] using the SRWA must either include all or exclude all of the contracts from any measure used to determine counterparty credit risk exposure.

Part VII. Risk-Weighted Assets for Operational Risk

Section 61. Qualification Requirements for Incorporation of Operational Risk Mitigants

(a) *Qualification to use operational risk mitigants.* A [bank] may adjust its estimate of operational risk exposure to reflect qualifying operational risk mitigants if:

(1) The [bank]'s operational risk quantification system is able to generate an estimate of the [bank]'s operational risk exposure (which does not incorporate qualifying operational risk mitigants) and an estimate of the [bank]'s operational risk exposure adjusted to incorporate qualifying operational risk mitigants; and

(2) The [bank]'s methodology for incorporating the effects of insurance, if the [bank] uses insurance as an operational risk mitigant, captures through appropriate discounts to the amount of risk mitigation:

(i) The residual term of the policy, where less than one year;

(ii) The cancellation terms of the policy, where less than one year;

(iii) The policy's timeliness of payment;

(iv) The uncertainty of payment by the provider of the policy; and

(v) Mismatches in coverage between the policy and the hedged operational loss event.

(b) *Qualifying operational risk mitigants.* Qualifying operational risk mitigants are:

(1) Insurance that:

(i) Is provided by an unaffiliated company that has a claims payment ability that is rated in one of the three highest rating categories by a NRSRO;

(ii) Has an initial term of at least one year and a residual term of more than 90 days;

(iii) Has a minimum notice period for cancellation by the provider of 90 days;

(iv) Has no exclusions or limitations based upon regulatory action or for the receiver or liquidator of a failed depository institution; and

(v) Is explicitly mapped to a potential operational loss event; and

(2) Operational risk mitigants other than insurance for which the [AGENCY] has given prior written approval. In evaluating an operational risk mitigant other than insurance, the [AGENCY] will consider whether the operational risk mitigant covers potential operational losses in a manner equivalent to holding regulatory capital.

Section 62. Mechanics of Risk-Weighted Asset Calculation

(a) If a [bank] does not qualify to use or does not have qualifying operational risk mitigants, the [bank]'s dollar risk-based capital requirement for operational risk is its operational risk exposure minus eligible operational risk offsets (if any).

(b) If a [bank] qualifies to use operational risk mitigants and has qualifying operational risk mitigants, the [bank]'s dollar risk-based capital requirement for operational risk is the greater of:

(1) The [bank]'s operational risk exposure adjusted for qualifying operational risk mitigants minus eligible operational risk offsets (if any); or

(2) 0.8 multiplied by the difference between:

(i) The [bank]'s operational risk exposure; and

(ii) Eligible operational risk offsets (if any).

(c) The [bank]'s risk-weighted asset amount for operational risk equals the [bank]'s dollar risk-based capital requirement for operational risk determined under paragraph (a) or (b) of this section multiplied by 12.5.

Part VIII. Disclosure

Section 71. Disclosure Requirements

(a) Each [bank] must publicly disclose each quarter its total and tier 1 risk-based capital ratios and their components (that is, tier 1 capital, tier 2 capital, total qualifying capital, and total risk-weighted assets).[4]

[Disclosure paragraph (b)]

[Disclosure paragraph (c)]

END OF COMMON RULE

[END OF COMMON TEXT]

List of Subjects

12 CFR Part 3

Administrative practices and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, reporting and recordkeeping requirements, Securities.

[4] Other public disclosure requirements continue to apply—for example, Federal securities law and regulatory reporting requirements.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital Adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

12 CFR Part 559

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Administrative practice and procedure, Advertising, Conflict of interest, Crime, Currency, Holding companies, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bond.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Adoption of Common Appendix

■ The adoption of the final common rules by the agencies, as modified by agency-specific text, is set forth below:

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the common preamble, the Office of the Comptroller of the Currency amends part 3 of chapter I of Title 12, Code of Federal Regulations as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

■ 2. New Appendix C to part 3 is added as set forth at the end of the common preamble.

■ 3. Appendix C to part 3 is amended as set forth below:

■ a. Remove ''[AGENCY]'' and add ''OCC'' in its place wherever it appears.

■ b. Remove ''[bank]'' and add ''bank'' in its place wherever it appears, remove ''[banks]'' and add ''banks'' in its place wherever it appears, remove ''[Banks]'' and add ''Banks'' in its place wherever it appears, and remove ''[Bank]'' and add ''Bank'' in its place wherever it appears.

■ c. Remove ''[Appendix__ to Part __]'' and add ''Appendix C to Part 3'' in its place wherever it appears.

■ d. Remove ''[the general risk-based capital rules]'' and add ''12 CFR part 3, Appendix A'' in its place wherever it appears.

■ e. Remove ''[the market risk rule]'' and add ''12 CFR part 3, Appendix B'' in its place wherever it appears.

■ f. In section 1, revise paragraph (b)(1)(i), the last sentence in paragraph (b)(3), and the last sentence in paragraph (c)(1) to read as follows:

Section 1. Purpose, Applicability, Reservation of Authority, and Principle of Conservatism

* * * * *

(b) *Applicability*. (1) * * *

(i) Has consolidated assets, as reported on the most recent year-end Consolidated Report of Condition and Income (Call Report) equal to $250 billion or more; * * *

(3) * * * In making a determination under this paragraph, the OCC will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.12.

(c) *Reservation of authority*—(1) * * * In making a determination under this paragraph, the OCC will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.12.

* * * * *

■ g. In section 2, revise the definition of excluded mortgage exposure, the definition of gain-on-sale, and paragraph (2)(i) of the definition of high volatility commercial real estate (HVCRE) exposure to read as follows:

Section 2. Definitions

* * * * *

Excluded mortgage exposure means any one- to four-family residential pre-sold construction loan for a residence for which the purchase contract is cancelled that would receive a 100 percent risk weight under section 618(a)(2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act and under and 12

CFR part 3, Appendix A, section 3(a)(3)(iii).

* * * * *

Gain-on-sale means an increase in the equity capital (as reported on Schedule RC of the Call Report) of a bank that results from a securitization (other than an increase in equity capital that results from the bank's receipt of cash in connection with the securitization).

* * * * *

High volatility commercial real estate (HVCRE) exposure * * *

(2) * * *

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the OCC's real estate lending standards at 12 CFR part 34, Subpart D;

* * * * *

■ h. Revise section 12 to read as follows:

Section 12. Deductions and Limitations Not Required

(a) *Deduction of CEIOs.* A bank is not required to make the deductions from capital for CEIOs in 12 CFR part 3, Appendix A, section 2(c).

(b) *Deduction of certain equity investments.* A bank is not required to make the deductions from capital for nonfinancial equity investments in 12 CFR part 3, Appendix A, section 2(c).

* * * * *

■ i. Revise the first sentence of paragraph (k)(1)(iv) and paragraph (k)(4) of section 42 to read as follows:

Section 42. Risk-Based Capital Requirement for Securitization Exposures

* * * * *

(k) * * *

(1) * * *

(iv) The bank is well capitalized, as defined in the OCC's prompt corrective action regulation at 12 CFR part 6. * * *

* * * * *

(4) The risk-based capital ratios of the bank must be calculated without regard to the capital treatment for transfers of small-business obligations with recourse specified in paragraph (k)(1) of this section as provided in 12 CFR part 3, Appendix A.

* * * * *

■ j. Remove ''[Disclosure paragraph (b)]'' and add in its place ''(b) A bank must comply with paragraph (b) of section 71 of appendix G to the Federal Reserve Board's Regulation Y (12 CFR part 225, appendix G) unless it is a consolidated subsidiary of a bank holding company or depository institution that is subject to these requirements.''

■ k. Remove ''[Disclosure paragraph (c)].''

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

■ For the reasons stated in the common preamble, the Board of Governors of the Federal Reserve System amends parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 2. New Appendix F to part 208 is added as set forth at the end of the common preamble.

■ 3. Appendix F to part 208 is amended as set forth below:

■ a. Remove ''[AGENCY]'' and add ''Federal Reserve'' in its place wherever it appears.

■ b. Remove ''[bank]'' and add ''bank'' in its place wherever it appears, remove ''[banks]'' and add ''banks'' in its place wherever it appears, remove ''[Banks]'' and add ''Banks'' in its place wherever it appears, and remove ''[Bank]'' and add ''Bank'' in its place wherever it appears.

■ c. Remove ''[Appendix __ to Part __]'' and add ''Appendix F to part 208'' in its place wherever it appears.

■ d. Remove ''[the general risk-based capital rules]'' and add ''12 CFR part 208, Appendix A'' in its place wherever it appears.

■ e. Remove ''[the market risk rule]'' and add ''12 CFR part 208, Appendix E'' in its place wherever it appears.

■ f. In section 1, revise paragraph (b)(1)(i), the last sentence in paragraph (b)(3), and the last sentence in paragraph (c)(1) to read as follows:

Section 1. Purpose, Applicability, Reservation of Authority, and Principle of Conservatism

* * * * *

(b) *Applicability.* (1) * * *

(i) Has consolidated assets, as reported on the most recent year-end Consolidated Report of Condition and Income (Call Report) equal to $250 billion or more; * * *

(3) * * * In making a determination under this paragraph, the Federal Reserve will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 263.202.

(c) *Reservation of authority*—(1) * * * In making a determination under this paragraph, the Federal Reserve will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 263.202.

* * * * *

■ g. In section 2, revise the definition of excluded mortgage exposure, the definition of gain-on-sale, and paragraph (2)(i) of the definition of high volatility commercial real estate (HVCRE) exposure to read as follows:

Section 2. Definitions

* * * * *

Excluded mortgage exposure means any one- to four-family residential pre-sold construction loan for a residence for which the purchase contract is cancelled that would receive a 100 percent risk weight under section 618(a)(2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act and under and 12 CFR part 208, Appendix A, section III.C.3.

* * * * *

Gain-on-sale means an increase in the equity capital (as reported on Schedule RC of the Call Report) of a bank that results from a securitization (other than an increase in equity capital that results from the bank's receipt of cash in connection with the securitization).

* * * * *

High volatility commercial real estate (HVCRE) exposure * * *

(2) * * *

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the Federal Reserve's real estate lending standards at 12 CFR part 208, Appendix C;

* * * * *

■ h. Revise section 12 to read as follows:

Section 12. Deductions and Limitations Not Required

(a) *Deduction of CEIOs.* A bank is not required to make the deductions from capital for CEIOs in 12 CFR part 208, Appendix A, section II.B.1.e.

(b) *Deduction of certain equity investments.* A bank is not required to make the deductions from capital for nonfinancial equity investments in 12

CFR part 208, Appendix A, section II.B.5.

* * * * *

■ i. Revise the first sentence of paragraph (k)(1)(iv) and paragraph (k)(4) of section 42 to read as follows:

Section 42. Risk-Based Capital Requirement for Securitization Exposures

* * * * *

(k) * * *

(1) * * *

(iv) The bank is well capitalized, as defined in the Federal Reserve's prompt corrective action regulation at 12 CFR part 208, Subpart D.* * *

* * * * *

(4) The risk-based capital ratios of the bank must be calculated without regard to the capital treatment for transfers of small-business obligations with recourse specified in paragraph (k)(1) of this section as provided in 12 CFR part 208, Appendix A.

* * * * *

■ j. Remove ''[Disclosure paragraph (b)]'' and add in its place ''(b) A bank must comply with paragraph (b) of section 71 of appendix G to the Federal Reserve Board's Regulation (12 CFR part 225, appendix G) unless it is a consolidated subsidiary of a bank holding company or depository institution that is subject to these requirements.''

■ k. Remove ''[Disclosure paragraph (c)].''

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

■ 2. New Appendix G to part 225 is added as set forth at the end of the common preamble.

■ 3. Appendix G to part 225 is amended as set forth below:

■ a. Remove ''[AGENCY]'' and add ''Federal Reserve'' in its place wherever it appears.

■ b. Remove ''[bank]'' and add in its place ''bank holding company'' wherever it appears, remove ''[banks]'' and add ''bank holding companies'' in its place wherever it appears, remove ''[Banks]'' and add ''Bank holding companies'' in its place wherever it appears, and remove ''[Bank]'' and add ''Bank holding company'' in its place wherever it appears.

■ c. Remove ''[Appendix__to Part__]'' and add ''Appendix G to Part 225'' in its place wherever it appears.

■ d. Remove ''[the general risk-based capital rules]'' and add ''12 CFR part 225, Appendix A'' in its place wherever it appears.

■ e. Remove ''[the market risk rule]'' and add ''12 CFR part 225, Appendix E'' in its place wherever it appears.

■ f. In section 1, revise paragraph (b)(1), the last sentence in paragraph (b)(3), and the last sentence in paragraph (c)(1) to read as follows:

Section 1. Purpose, Applicability, Reservation of Authority, and Principle of Conservatism

* * * * *

(b) * * *

(1) This appendix applies to a bank holding company that:

(i) Is not a consolidated subsidiary of another bank holding company that uses this appendix to calculate its risk-based capital requirements; and

(ii) That:

(A) Is a U.S.-based bank holding company that has total consolidated assets (excluding assets held by an insurance underwriting subsidiary), as reported on the most recent year-end FR Y–9C Report, equal to $250 billion or more;

(B) Has consolidated total on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with head office or guarantor located in another country plus redistributed guaranteed amounts to the country of head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report); or

(C) Has a subsidiary depository institution that is required, or has elected, to use 12 CFR part 3, Appendix C, 12 CFR part 208, Appendix F, 12 CFR part 325, Appendix F, or 12 CFR part 567, Appendix C to calculate its risk-based capital requirements.

* * * * *

(3) * * * In making a determination under this paragraph, the Federal Reserve will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 263.202.

(c) *Reservation of authority*—(1) * * * In making a determination under this paragraph, the Federal Reserve will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 263.202.

* * * * *

■ g. In section 2, revise the definition of excluded mortgage exposure, the definition of gain-on-sale, and paragraph (2)(i) of the definition of high volatility commercial real estate (HVCRE) exposure to read as follows:

Section 2. Definitions

* * * * *

Excluded mortgage exposure means any one- to four-family residential pre-sold construction loan for a residence for which the purchase contract is cancelled that would receive a 100 percent risk weight under section 618(a)(2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act and under 12 CFR part 225, Appendix A, section III.C.3.

* * * * *

Gain-on-sale means an increase in the equity capital (as reported on Schedule HC of the FR Y–9C Report) of a bank holding company that results from a securitization (other than an increase in equity capital that results from the bank holding company's receipt of cash in connection with the securitization).

* * * * *

High volatility commercial real estate (HVCRE) exposure * * *

(2) * * *

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the relevant agency's real estate lending standards at 12 CFR part 34, Subpart D (OCC), 12 CFR part 208, Appendix C (Federal Reserve); 12 CFR part 365, Subpart D (FDIC); and 12 CFR 560.100–560.101 (OTS).

* * * * *

■ h. Add a new paragraph (c)(8) to section 11 to read as follows:

Section 11. Additional Deductions.

* * * * *

(c) * * *

(8) A bank holding company must also deduct an amount equal to the minimum regulatory capital requirement established by the regulator of any insurance underwriting subsidiary of the holding company. For U.S.-based insurance underwriting subsidiaries, this amount generally would be 200 percent of the subsidiary's Authorized Control Level as established by the appropriate state regulator of the insurance company.

* * * * *

■ i. Revise section 12 to read as follows:

Section 12. Deductions and Limitations Not Required.

(a) *Deduction of CEIOs*. A bank holding company is not required to make the deductions from capital for CEIOs in 12 CFR part 225, Appendix A, section II.B.1.e.

(b) *Deduction for certain equity investments*. A bank holding company is not required to make the deductions from capital for nonfinancial equity investments in 12 CFR part 225, Appendix A, section II.B.5.

* * * * *

■ j. Remove and reserve section 22(h)(3)(ii).

■ k. In section 31(e)(3)(i), remove ''A [bank] may assign a risk-weighted asset amount of zero to cash owned and held in all offices of the [bank] or in transit and to gold bullion held in the [bank]'s own vaults, or held in another [bank]'s vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities'' and add in its place ''A bank holding company may assign a risk-weighted asset amount of zero to cash owned and held in all offices of subsidiary depository institutions or in transit and for gold bullion held in either a subsidiary depository institution's own vaults, or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities.''

* * * * *

■ l. Revise the first sentence of paragraph (k)(1)(iv) and revise paragraph (k)(4) of section 42 to read as follows:

Section 42. Risk-Based Capital Requirement for Securitization Exposures

* * * * *

(k) * * *

(1) * * *

(iv) The bank holding company is well capitalized, as defined in the Federal Reserve's prompt corrective action regulation at 12 CFR part 208, Subpart D.* * *

* * * * *

(4) The risk-based capital ratios of the bank holding company must be calculated without regard to the capital treatment for transfers of small-business obligations with recourse specified in paragraph (k)(1) of this section as provided in 12 CFR part 225, Appendix A.

* * * * *

■ m. In section 71, remove ''[Disclosure paragraph (b)].''

■ n. In section 71, remove ''[Disclosure paragraph (c)].''

■ o. In section 71, add new paragraph (b) and Tables 11.1 through 11.11 to read as follows:

Section 71. Disclosure Requirements

* * * * *

(b)(1) Each consolidated bank holding company that is not a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction and has successfully completed its parallel run must provide timely public disclosures each calendar quarter of the information in tables 11.1–11.11 below. If a significant change occurs, such that the most recent reported amounts are no longer reflective of the bank holding company's capital adequacy and risk profile, then a brief discussion of this change and its likely impact must be provided as soon as practicable thereafter. Qualitative disclosures that typically do not change each quarter (for example, a general summary of the bank holding company's risk management objectives and policies, reporting system, and definitions) may be disclosed annually, provided any significant changes to these are disclosed in the interim. Management is encouraged to provide all of the disclosures required by this appendix in one place on the bank holding company's public Web site.[5] The bank holding company must make these disclosures publicly available for each of the last three years (that is, twelve quarters) or such shorter period since it began its first floor period.

(2) Each bank holding company is required to have a formal disclosure policy approved by the board of directors that addresses its approach for determining the disclosures it makes. The policy must address the associated internal controls and disclosure controls and procedures. The board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over financial reporting, including the disclosures required by this appendix, and must ensure that appropriate review of the disclosures takes place. One or more senior officers of the bank holding company must attest that the disclosures meet the requirements of this appendix.

(3) If a bank holding company believes that disclosure of specific commercial or financial information would prejudice seriously its position by making public information that is either proprietary or confidential in nature, the bank holding company need not disclose those specific items, but must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed.

TABLE 11.1.—SCOPE OF APPLICATION

Qualitative Disclosures	(a) The name of the top corporate entity in the group to which the appendix applies.
	(b) An outline of differences in the basis of consolidation for accounting and regulatory purposes, with a brief description of the entities[6] within the group that are fully consolidated; that are deconsolidated and deducted; for which the regulatory capital requirement is deducted; and that are neither consolidated nor deducted (for example, where the investment is risk-weighted).
	(c) Any restrictions, or other major impediments, on transfer of funds or regulatory capital within the group.
Quantitative Disclosures	(d) The aggregate amount of surplus capital of insurance subsidiaries (whether deducted or subjected to an alternative method) included in the regulatory capital of the consolidated group.
	(e) The aggregate amount by which actual regulatory capital is less than the minimum regulatory capital requirement in all subsidiaries with regulatory capital requirements and the name(s) of the subsidiaries with such deficiencies.

[5] Alternatively, a bank holding company may provide the disclosures in more than one place, as some of them may be included in public financial reports (for example, in Management's Discussion and Analysis included in SEC filings) or other regulatory reports. The bank holding company must provide a summary table on its public Web site that specifically indicates where all the disclosures may be found (for example, regulatory report schedules, page numbers in annual reports).

[6] Entities include securities, insurance and other financial subsidiaries, commercial subsidiaries (where permitted), and significant minority equity investments in insurance, financial and commercial entities.

TABLE 11.2.—CAPITAL STRUCTURE

Qualitative Disclosures	(a) Summary information on the terms and conditions of the main features of all capital instruments, especially in the case of innovative, complex or hybrid capital instruments.
Quantitative Disclosures	(b) The amount of tier 1 capital, with separate disclosure of: • Common stock/surplus; • Retained earnings; • Minority interests in the equity of subsidiaries; • Restricted core capital elements as defined in 12 CFR part 225, Appendix A; • Regulatory calculation differences deducted from tier 1 capital; [7] and • Other amounts deducted from tier 1 capital, including goodwill and certain intangibles. (c) The total amount of tier 2 capital. (d) Other deductions from capital. [8] (e) Total eligible capital.

TABLE 11.3.—CAPITAL ADEQUACY

Qualitative disclosures	(a) A summary discussion of the bank holding company's approach to assessing the adequacy of its capital to support current and future activities.

Quantitative disclosures	(b) Risk-weighted assets for credit risk from:
	• Wholesale exposures;
	• Residential mortgage exposures;
	• Qualifying revolving exposures;
	• Other retail exposures;
	• Securitization exposures;
	• Equity exposures
	  • Equity exposures subject to the simple risk weight approach; and
	  • Equity exposures subject to the internal models approach.
	(c) Risk-weighted assets for market risk as calculated under [the market risk rule]: [9]
	• Standardized approach for specific risk; and
	• Internal models approach for specific risk.
	(d) Risk-weighted assets for operational risk.
	(e) Total and tier 1 risk-based capital ratios: [10]
	• For the top consolidated group; and
	• For each DI subsidiary.

General Qualitative Disclosure Requirement

For each separate risk area described in tables 11.4 through 11.11, the bank holding company must describe its risk management objectives and policies, including:

• Strategies and processes;

• The structure and organization of the relevant risk management function;

• The scope and nature of risk reporting and/or measurement systems;

• Policies for hedging and/or mitigating risk and strategies and processes for monitoring the continuing effectiveness of hedges/mitigants.

TABLE 11.4.[11]—CREDIT RISK: GENERAL DISCLOSURES

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to credit risk (excluding counterparty credit risk disclosed in accordance with Table 11.6), including: • Definitions of past due and impaired (for accounting purposes); • Description of approaches followed for allowances, including statistical methods used where applicable; and • Discussion of the bank holding company's credit risk management policy.
Quantitative Disclosures	(b) Total credit risk exposures and average credit risk exposures, after accounting offsets in accordance with GAAP,[12] and without taking into account the effects of credit risk mitigation techniques (for example, collateral and netting), over the period broken down by major types of credit exposure.[13] (c) Geographic [14] distribution of exposures, broken down in significant areas by major types of credit exposure. (d) Industry or counterparty type distribution of exposures, broken down by major types of credit exposure. (e) Remaining contractual maturity breakdown (for example, one year or less) of the whole portfolio, broken down by major types of credit exposure. (f) By major industry or counterparty type: • Amount of impaired loans; • Amount of past due loans; [15] • Allowances; and

[7] Representing 50 percent of the amount, if any, by which total expected credit losses as calculated within the IRB approach exceed eligible credit reserves, which must be deducted from tier 1 capital.

[8] Including 50 percent of the amount, if any, by which total expected credit losses as calculated within the IRB approach exceed eligible credit reserves, which must be deducted from tier 2 capital.

[9] Risk-weighted assets determined under [the market risk rule] are to be disclosed only for the approaches used.

[10] Total risk-weighted assets should also be disclosed.

TABLE 11.4.[11]—CREDIT RISK: GENERAL DISCLOSURES—Continued

	• Charge-offs during the period. (g) Amount of impaired loans and, if available, the amount of past due loans broken down by significant geographic areas including, if practical, the amounts of allowances related to each geographical area.[16] (h) Reconciliation of changes in the allowance for loan and lease losses.[17]

TABLE 11.5.—CREDIT RISK: DISCLOSURES FOR PORTFOLIOS SUBJECT TO IRB RISK-BASED CAPITAL FORMULAS

Qualitative disclosures	(a) Explanation and review of the: • Structure of internal rating systems and relation between internal and external ratings; • Use of risk parameter estimates other than for regulatory capital purposes; • Process for managing and recognizing credit risk mitigation (see table 11.7); and • Control mechanisms for the rating system, including discussion of independence, accountability, and rating systems review. (b) Description of the internal ratings process, provided separately for the following: • Wholesale category; • Retail subcategories; • Residential mortgage exposures; • Qualifying revolving exposures; and • Other retail exposures. For each category and subcategory the description should include: • The types of exposure included in the category/subcategories; and • The definitions, methods and data for estimation and validation of PD, LGD, and EAD, including assumptions employed in the derivation of these variables.[18]
Quantitative disclosures: Risk assessment.	(c) For wholesale exposures, present the following information across a sufficient number of PD grades (including default) to allow for a meaningful differentiation of credit risk:[19] • Total EAD;[20] • Exposure-weighted average LGD (percentage); • Exposure-weighted average risk weight; and • Amount of undrawn commitments and exposure-weighted average EAD for wholesale exposures. For each retail subcategory, present the disclosures outlined above across a sufficient number of segments to allow for a meaningful differentiation of credit risk.
Quantitative disclosures: Historical results.	(d) Actual losses in the preceding period for each category and subcategory and how this differs from past experience. A discussion of the factors that impacted the loss experience in the preceding period—for example, has the bank holding company experienced higher than average default rates, loss rates or EADs. (e) Bank holding company's estimates compared against actual outcomes over a longer period.[21] At a minimum, this should include information on estimates of losses against actual losses in the wholesale category and each retail subcategory over a period sufficient to allow for a meaningful assessment of the performance of the internal rating processes for each category/subcategory.[22] Where appropriate, the bank holding company should further decompose this to provide analysis of PD, LGD, and EAD outcomes against estimates provided in the quantitative risk assessment disclosures above.[23]

[11] Table 4 does not include equity exposures.

[12] For example, FASB Interpretations 39 and 41.

[13] For example, bank holding companies could apply a breakdown similar to that used for accounting purposes. Such a breakdown might, for instance, be (a) loans, off-balance sheet commitments, and other non-derivative off-balance sheet exposures, (b) debt securities, and (c) OTC derivatives.

[14] Geographical areas may comprise individual countries, groups of countries, or regions within countries. A bank holding company might choose to define the geographical areas based on the way the company's portfolio is geographically managed. The criteria used to allocate the loans to geographical areas must be specified.

[15] A bank holding company is encouraged also to provide an analysis of the aging of past-due loans.

[16] The portion of general allowance that is not allocated to a geographical area should be disclosed separately.

[17] The reconciliation should include the following: A description of the allowance; the opening balance of the allowance; charge-offs taken against the allowance during the period; amounts provided (or reversed) for estimated probable loan losses during the period; any other adjustments (for example, exchange rate differences, business combinations, acquisitions and disposals of subsidiaries), including transfers between allowances; and the closing balance of the allowance. Charge-offs and recoveries that have been recorded directly to the income statement should be disclosed separately.

[18] This disclosure does not require a detailed description of the model in full—it should provide the reader with a broad overview of the model approach, describing definitions of the variables and methods for estimating and validating those variables set out in the quantitative risk disclosures below. This should be done for each of the four category/subcategories. The bank holding company should disclose any significant differences in approach to estimating these variables within each category/subcategories.

[19] The PD, LGD and EAD disclosures in Table 11.5(c) should reflect the effects of collateral, qualifying master netting agreements, eligible guarantees and eligible credit derivatives as defined in part I. Disclosure of each PD grade should include the exposure-weighted average PD for each grade. Where a bank holding company aggregates PD grades for the purposes of disclosure, this should be a representative breakdown of the distribution of PD grades used for regulatory capital purposes.

[20] Outstanding loans and EAD on undrawn commitments can be presented on a combined basis for these disclosures.

[21] These disclosures are a way of further informing the reader about the reliability of the information provided in the "quantitative disclosures: risk assessment" over the long run. The disclosures are requirements from year-end 2010; in the meantime, early adoption is encouraged. The phased implementation is to allow a bank holding company sufficient time to build up a longer run of data that will make these disclosures meaningful.

[22] This regulation is not prescriptive about the period used for this assessment. Upon implementation, it might be expected that a bank holding company would provide these disclosures for as long run of data as possible—for example, if a bank holding company has 10 years of data, it might choose to disclose the average default rates for each PD grade over that 10-year period. Annual amounts need not be disclosed.

TABLE 11.6.—GENERAL DISCLOSURE FOR COUNTERPARTY CREDIT RISK OF OTC DERIVATIVE CONTRACTS, REPO-STYLE TRANSACTIONS, AND ELIGIBLE MARGIN LOANS

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to OTC derivatives, eligible margin loans, and repo-style transactions, including: • Discussion of methodology used to assign economic capital and credit limits for counterparty credit exposures; • Discussion of policies for securing collateral, valuing and managing collateral, and establishing credit reserves; • Discussion of the primary types of collateral taken; • Discussion of policies with respect to wrong-way risk exposures; and • Discussion of the impact of the amount of collateral the bank holding company would have to provide if the bank holding company were to receive a credit rating downgrade.
Quantitative Disclosures	(b) Gross positive fair value of contracts, netting benefits, netted current credit exposure, collateral held (including type, for example, cash, government securities), and net unsecured credit exposure.[24] Also report measures for EAD used for regulatory capital for these transactions, the notional value of credit derivative hedges purchased for counterparty credit risk protection, and, for bank holding companies not using the internal models methodology in section 32(d) of this appendix, the distribution of current credit exposure by types of credit exposure.[25] (c) Notional amount of purchased and sold credit derivatives, segregated between use for the bank holding company's own credit portfolio and for its intermediation activities, including the distribution of the credit derivative products used, broken down further by protection bought and sold within each product group. (d) The estimate of alpha if the bank holding company has received supervisory approval to estimate alpha.

TABLE 11.7.—CREDIT RISK MITIGATION [26] [27] [28]

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to credit risk mitigation including: • Policies and processes for, and an indication of the extent to which the bank holding company uses, on- and off-balance sheet netting; • Policies and processes for collateral valuation and management; • A description of the main types of collateral taken by the bank holding company; • The main types of guarantors/credit derivative counterparties and their creditworthiness; and • Information about (market or credit) risk concentrations within the mitigation taken.
Quantitative Disclosures	(b) For each separately disclosed portfolio, the total exposure (after, where applicable, on-or off-balance sheet netting) that is covered by guarantees/credit derivatives.

TABLE 11.8.—SECURITIZATION

Qualitative disclosures	(a) The general qualitative disclosure requirement with respect to securitization (including synthetics), including a discussion of: • The bank holding company's objectives relating to securitization activity, including the extent to which these activities transfer credit risk of the underlying exposures away from the bank holding company to other entities; • The roles played by the bank holding company in the securitization process[29] and an indication of the extent of the bank holding company's involvement in each of them; and • The regulatory capital approaches (for example, RBA, IAA and SFA) that the bank holding company follows for its securitization activities. (b) Summary of the bank holding company's accounting policies for securitization activities, including: • Whether the transactions are treated as sales or financings; • Recognition of gain-on-sale; • Key assumptions for valuing retained interests, including any significant changes since the last reporting period and the impact of such changes; and • Treatment of synthetic securitizations.

[23] A bank holding company should provide this further decomposition where it will allow users greater insight into the reliability of the estimates provided in the ''quantitative disclosures: risk assessment.'' In particular, it should provide this information where there are material differences between its estimates of PD, LGD or EAD compared to actual outcomes over the long run. The bank holding company should also provide explanations for such differences.

[24] Net unsecured credit exposure is the credit exposure after considering the benefits from legally enforceable netting agreements and collateral arrangements, without taking into account haircuts for price volatility, liquidity, etc.

[25] This may include interest rate derivative contracts, foreign exchange derivative contracts, equity derivative contracts, credit derivatives, commodity or other derivative contracts, repo-style transactions, and eligible margin loans.

[26] At a minimum, a bank holding company must provide the disclosures in Table 11.7 in relation to credit risk mitigation that has been recognized for the purposes of reducing capital requirements under this appendix. Where relevant, bank holding companies are encouraged to give further information about mitigants that have not been recognized for that purpose.

[27] Credit derivatives that are treated, for the purposes of this appendix, as synthetic securitization exposures should be excluded from the credit risk mitigation disclosures and included within those relating to securitization.

[28] Counterparty credit risk-related exposures disclosed pursuant to Table 11.6 should be excluded from the credit risk mitigation disclosures in Table 11.7.

TABLE 11.8.—SECURITIZATION—Continued

	(c) Names of NRSROs used for securitizations and the types of securitization exposure for which each agency is used.
Quantitative disclosures	(d) The total outstanding exposures securitized by the bank holding company in securitizations that meet the operational criteria in section 41 of this appendix (broken down into traditional/synthetic), by underlying exposure type.[30] [31] [32] (e) For exposures securitized by the bank holding company in securitizations that meet the operational criteria in Section 41 of this appendix: • Amount of securitized assets that are impaired/past due; and • Losses recognized by the bank holding company during the current period[33] broken down by exposure type. (f) Aggregate amount of securitization exposures broken down by underlying exposure type. (g) Aggregate amount of securitization exposures and the associated IRB capital requirements for these exposures broken down into a meaningful number of risk weight bands. Exposures that have been deducted from capital should be disclosed separately by type of underlying asset. (h) For securitizations subject to the early amortization treatment, the following items by underlying asset type for securitized facilities: • The aggregate drawn exposures attributed to the seller's and investors' interests; and • The aggregate IRB capital charges incurred by the bank holding company against the investors' shares of drawn balances and undrawn lines. (i) Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by asset type.

TABLE 11.9.—OPERATIONAL RISK

Qualitative disclosures	(a) The general qualitative disclosure requirement for operational risk. (b) Description of the AMA, including a discussion of relevant internal and external factors considered in the bank holding company's measurement approach. (c) A description of the use of insurance for the purpose of mitigating operational risk.

TABLE 11.10.—EQUITIES NOT SUBJECT TO MARKET RISK RULE

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to equity risk, including: • Differentiation between holdings on which capital gains are expected and those held for other objectives, including for relationship and strategic reasons; and • Discussion of important policies covering the valuation of and accounting for equity holdings in the banking book. This includes the accounting techniques and valuation methodologies used, including key assumptions and practices affecting valuation as well as significant changes in these practices.
Quantitative Disclosures	(b) Value disclosed in the balance sheet of investments, as well as the fair value of those investments; for quoted securities, a comparison to publicly-quoted share values where the share price is materially different from fair value. (c) The types and nature of investments, including the amount that is: • Publicly traded; and • Non-publicly traded. (d) The cumulative realized gains (losses) arising from sales and liquidations in the reporting period. (e) • Total unrealized gains (losses)[34] • Total latent revaluation gains (losses)[35] • Any amounts of the above included in tier 1 and/or tier 2 capital. (f) Capital requirements broken down by appropriate equity groupings, consistent with the bank holding company's methodology, as well as the aggregate amounts and the type of equity investments subject to any supervisory transition regarding regulatory capital requirements.[36]

[29] For example: originator, investor, servicer, provider of credit enhancement, sponsor of asset backed commercial paper facility, liquidity provider, or swap provider.

[30] Underlying exposure types may include, for example, one- to four-family residential loans, home equity lines, credit card receivables, and auto loans.

[31] Securitization transactions in which the originating bank holding company does not retain any securitization exposure should be shown separately but need only be reported for the year of inception.

[32] Where relevant, a bank holding company is encouraged to differentiate between exposures resulting from activities in which they act only as sponsors, and exposures that result from all other bank holding company securitization activities.

[33] For example, charge-offs/allowances (if the assets remain on the bank holding company's balance sheet) or write-downs of I/O strips and other residual interests.

[34] Unrealized gains (losses) recognized in the balance sheet but not through earnings.

[35] Unrealized gains (losses) not recognized either in the balance sheet or through earnings.

[36] This disclosure should include a breakdown of equities that are subject to the 0 percent, 20 percent, 100 percent, 300 percent, 400 percent, and 600 percent risk weights, as applicable.

TABLE 11.11.—INTEREST RATE RISK FOR NON-TRADING ACTIVITIES

Qualitative disclosures	(a) The general qualitative disclosure requirement, including the nature of interest rate risk for non-trading activities and key assumptions, including assumptions regarding loan prepayments and behavior of non-maturity deposits, and frequency of measurement of interest rate risk for non-trading activities.
Quantitative disclosures	(b) The increase (decline) in earnings or economic value (or relevant measure used by management) for upward and downward rate shocks according to management's method for measuring interest rate risk for non-trading activities, broken down by currency (as appropriate).

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

■ For the reasons stated in the common preamble, the Federal Deposit Insurance Corporation amends part 325 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

■ 1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

■ 2. New Appendix D to part 325 is added as set forth at the end of the common preamble.

■ 3. Appendix D to part 325 is amended as set forth below:

■ a. Remove ''[AGENCY]'' and add ''FDIC'' in its place wherever it appears.

■ b. Remove ''[bank]'' and add ''bank'' in its place wherever it appears, remove ''[banks]'' and add ''banks'' in its place wherever it appears, remove ''[Banks]'' and add ''Banks'' in its place wherever it appears, and remove ''[Bank]'' and add ''Bank'' in its place wherever it appears.

■ c. Remove ''[Appendix __ to Part __]'' and add ''Appendix D to Part 325'' in its place wherever it appears.

■ d. Remove ''[the general risk-based capital rules]'' and add ''12 CFR part 325, Appendix A'' in its place wherever it appears.

■ e. Remove ''[the market risk rule]'' and add ''12 CFR part 325, Appendix C'' in its place wherever it appears.

■ f. In section 1, revise paragraph (b)(1)(i), the last sentence in paragraph (b)(3), and the last sentence in paragraph (c)(1) to read as follows:

Section 1. Purpose, Applicability, Reservation of Authority, and Principle of Conservatism

* * * * *

(b) *Applicability.* (1) * * *

(i) Has consolidated assets, as reported on the most recent year-end Consolidated Report of Condition and Income (Call Report) equal to $250 billion or more;

* * * * *

(3) * * * In making a determination under this paragraph, the FDIC will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 325.6(c).

(c) *Reservation of authority*—(1) * * * In making a determination under this paragraph, the FDIC will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 325.6(c).

* * * * *

■ g. In section 2, revise the definition of excluded mortgage exposure, the definition of gain-on-sale, and paragraph (2)(i) of the definition of high volatility commercial real estate (HVCRE) exposure to read as follows:

Section 2. Definitions

* * * * *

Excluded mortgage exposure means any one- to four-family residential pre-sold construction loan for a residence for which the purchase contract is cancelled that would receive a 100 percent risk weight under section 618(a)(2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act and under 12 CFR part 325, Appendix A, section II.C.

* * * * *

Gain-on-sale means an increase in the equity capital (as reported on Schedule RC of the Call Report) of a bank that results from a securitization (other than an increase in equity capital that results from the bank's receipt of cash in connection with the securitization).

* * * * *

High volatility commercial real estate (HVCRE) exposure * * *

(2) * * *

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the FDIC's real estate lending standards at 12 CFR part 365, Appendix A.

* * * * *

■ h. Revise section 12 to read as follows:

Section 12. Deductions and Limitations Not Required

(a) *Deduction of CEIOs.* A bank is not required to make the deductions from capital for CEIOs in 12 CFR part 325, Appendix A, section II.B.5.

(b) *Deduction for certain equity investments.* A bank is not required to make the deductions from capital for nonfinancial equity investments in 12 CFR part 325, Appendix A, section II.B.

* * * * *

■ i. Revise the first sentence of paragraph (k)(1)(iv) and paragraph (k)(4) of section 42 to read as follows:

Section 42. Risk-Based Capital Requirement for Securitization Exposures

* * * * *

(k) * * *

(1) * * *

(iv) The bank is well capitalized, as defined in the FDIC 's prompt corrective action regulation at 12 CFR part 325, Subpart B. For purposes of determining whether a bank is well capitalized for purposes of this paragraph, the bank's capital ratios must be calculated without regard to the capital treatment for transfers of small-business obligations with recourse specified in paragraph (k)(1) of this section. * * *

* * * * *

(4) The risk-based capital ratios of the bank must be calculated without regard to the capital treatment for transfers of small-business obligations with recourse specified in paragraph (k)(1) of this section as provided in 12 CFR part 325, Appendix A.

* * * * *

■ j. Remove ''[Disclosure paragraph (b)]'' and add in its place ''(b) A bank must comply with paragraph (b) of section 71 of appendix G to the Federal Reserve Board's Regulation Y (12 CFR part 225, appendix G) unless it is a consolidated subsidiary of a bank holding company or depository institution that is subject to these requirements.''

■ k. Remove ''[Disclosure paragraph (c)].''

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

■ For the reasons set out in the preamble, the Office of Thrift Supervision amends Chapter V of title 12 of the Code of Federal Regulations to read as follows:

PART 559—SUBORDINATE ORGANIZATIONS

■ 1. The authority citation for part 559 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828.

■ 2. Revise § 559.5(b)(1) to read as follows:

§ 559.5 How much may a savings association invest in service corporations or lower tier entities?

* * * * *

(b) * * *

(1) You and your GAAP-consolidated subsidiaries may, in the aggregate, make loans of up to 15% of your total capital, as described in part 567 of this chapter to each subordinate organization that does not qualify as a GAAP-consolidated subsidiary. All loans made under this paragraph (b)(1) may not, in the aggregate, exceed 50% of your total capital, as described in part 567 of this chapter.

* * * * *

PART 560—LENDING AND INVESTMENT

■ 3. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806, 42 U.S.C. 4106.

§ 560.101 [Amended]

■ 4. In footnote 2 to the appendix to § 560.101, remove the phrase ''as defined at 12 CFR 567.5(c)'' and add the phrase ''as described in part 567 of this chapter'' in its place.

PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

■ 5. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 31 U.S.C. 5318; 42 U.S.C. 4106.

§ 563.74 [Amended]

■ 6. Amend § 563.74 as follows:

■ a. In paragraph (i)(2)(iv), remove the phrase ''regulatory capital requirement under § 567.2 of this chapter'' and add the phrase ''regulatory capital requirements under part 567 of this chapter'' in its place.

■ b. In paragraph (i)(2)(v) remove the phrase ''regulatory capital requirement under § 567.2 of this chapter'' and add the phrase ''regulatory capital requirements under part 567 of this chapter'' in its place.

§ 563.81 [Amended]

■ 7. Amend § 563.81 as follows:

■ a. In paragraph (a), remove the phrase ''in supplementary capital under 12 CFR 567.5(b)'' and add the phrase ''in supplementary capital (tier 2 capital) under part 567 of this chapter'' in its place.

■ b. In paragraph (d)(2)(ii), remove the phrase ''regulatory capital requirements at § 567.2 of this chapter'' and add the phrase ''regulatory capital requirements at part 567 of this chapter'' in its place.

§ 563.141 [Amended]

■ 8. In § 563.141(b), remove the phrase ''in your total capital under § 567.5 of this chapter'' and add the phrase ''in your total capital under part 567 of this chapter'' in its place.

§ 563.142 [Amended]

■ 9. In § 563.142, amend the definition of ''capital'' by removing the phrase ''total capital, as described under § 567.5(c) of this chapter'' and adding the phrase ''total capital, as computed under part 567 of this chapter'' in its place.

PART 567—CAPITAL

■ 10. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828(note).

■ 11. Add a new subpart A to read as follows:

Subpart A—Scope

§ 567.0 Scope.

(a) This part prescribes the minimum regulatory capital requirements for savings associations. Subpart B of this part applies to all savings associations, except as described in paragraph (b) of this section.

(b)(1) A savings association that uses Appendix C of this part must comply with the minimum qualifying criteria for internal risk measurement and management processes for calculating risk-based capital requirements, utilize the methodologies for calculating risk-based capital requirements, and make the required disclosures described in that appendix.

(2) Subpart B of this part does not apply to the computation of risk-based capital requirements by a savings association that uses Appendix C of this part. However, these savings associations:

(i) Must compute the components of capital under § 567.5, subject to the modifications in sections 11 and 12 of Appendix C of this part.

(ii) Must meet the leverage ratio requirement at §§ 567.2(a)(2) and 567.8 with tier 1 capital, as computed under sections 11 and 12 of Appendix C of this part.

(iii) Must meet the tangible capital requirement described at §§ 567.2(a)(3) and 567.9.

(iv) Are subject to §§ 567.3 (individual minimum capital requirement), 567.4 (capital directives); and 567.10 (consequences of failure to meet capital requirements).

(v) Are subject to the reservations of authority at § 567.11, which supplement the reservations of authority at section 1 of Appendix C of this part.

■ 12. Designate §§ 567.1 through 567.6 and §§ 567.8 through 567.12 as subpart B and add a heading for subpart B to read as follows:

Subpart B—Regulatory Capital Requirements

■ 13. Revise the introductory sentence to § 567.1 to read as follows:

§ 567.1 Definitions.

For the purposes of this subpart:

* * * * *

■ 14. In § 567.3, revise paragraphs (a), (b) introductory text, and (d)(1) to read as follows:

§ 567.3 Individual minimum capital requirements.

(a) *Purpose and scope.* The rules and procedures specified in this section apply to the establishment of an individual minimum capital requirement for a savings association that varies from the risk-based capital requirement, the leverage ratio requirement or the tangible capital requirement that would otherwise apply to the savings association under this part.

(b) *Appropriate considerations for establishing individual minimum capital requirements.* Minimum capital levels higher than the risk-based capital requirement, the leverage ratio requirement or the tangible capital requirement required under this part may be appropriate for individual savings associations. Increased individual minimum capital requirements may be established upon a determination that the savings association's capital is or may become inadequate in view of its circumstances. For example, higher capital levels may be appropriate for:

* * * * *

(d) *Procedures*—(1) *Notification.* When the OTS determines that a minimum capital requirement is necessary or appropriate for a particular savings association, it shall notify the savings association in writing of its proposed individual minimum capital requirement; the schedule for compliance with the new requirement; and the specific causes for determining that the higher individual minimum capital requirement is necessary or appropriate for the savings association. The OTS shall forward the notifying letter to the appropriate state supervisor if a state-chartered savings association would be subject to an individual minimum capital requirement.

* * * * *

■ 15. Revise paragraph (a)(1) introductory text of § 567.4 to read as follows:

§ 567.4 Capital directives.

(a) *Issuance of a Capital Directive*—(1) *Purpose.* In addition to any other action authorized by law, the Office, may issue a capital directive to a savings association that does not have an amount of capital satisfying its minimum capital requirement. Issuance of such a capital directive may be based on a savings association's noncompliance with the risk-based capital requirement, the leverage ratio requirement, the tangible capital requirement, or individual minimum capital requirement established under this part, by a written agreement under 12 U.S.C. 1464(s), or as a condition for approval of an application. A capital directive may order a savings association to:

* * * * *

■ 16. Revise paragraph (e) introductory text of § 567.10 to read as follows:

§ 567.10 Consequences of failure to meet capital requirements.

* * * * *

(e) If a savings association fails to meet the risk-based capital requirement, the leverage ratio requirement, or the tangible capital requirement established under this part, the Director may, through enforcement proceedings or otherwise, require such savings association to take one or more of the following corrective actions:

* * * * *

■ 17. Appendices A and B are added to part 567, and are reserved.

■ 18. Appendix C is added to part 567 as set forth at the end of the common preamble.

■ 19. Amend Appendix C of part 567 as follows:

■ a. Revise the heading of Appendix C to read as follows:

Risk-Based Capital Requirements—Internal-Ratings-Based and Advanced Measurement Approaches

■ b. Remove [AGENCY] and add ''OTS'' in its place wherever it appears.

■ c. Remove ''[bank]'' and add ''savings association'' in its place wherever it appears, remove ''[banks]'' and add ''savings associations'' in its place wherever it appears, remove ''[Banks]'' and add ''Savings associations'' in its place wherever it appears, and remove ''[Bank]'' and add ''Savings association'' in its place wherever it appears.

■ d. Remove ''[Appendix__to Part__]'' and add ''Appendix C to Part 567'' in its place wherever it appears.

■ e. Remove ''[the general risk-based capital rules]'' and add ''subpart B of part 567'' in its place wherever it appears.

■ f. Remove ''[the market risk rule]'' and add ''any applicable market risk rule'' in its place wherever it appears.

■ g. In section 1, revise paragraph (b)(1)(i), the last sentence in paragraph (b)(3), and the last sentence in paragraph (c)(1) to read as follows:

Section 1 Purpose, Applicability, Reservation of Authority, and Principle of Conservatism

* * * * *

(b) *Applicability.* (1) * * *

(i) Has consolidated assets, as reported on the most recent year-end Thrift Financial Report (TFR) equal to $250 billion or more;

* * * * *

(3) * * * In making a determination under this paragraph, the OTS will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in § 567.3(d).

(c) *Reservation of authority*—(1) * * * In making a determination under this paragraph, the OTS will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in § 567.3(d).

* * * * *

■ h. In section 2, revise the definition of eligible credit reserves, the definition of excluded mortgage exposure, paragraph (1) of the definition of exposure at default (EAD), the definition of gain-on-sale, paragraph (2)(i) of the definition of high volatility commercial real estate (HVCRE) exposure, and paragraph (7) of the definition of traditional securitization, to read as follows:

Section 2 Definitions

* * * * *

Eligible credit reserves means all general allowances that have been established through a charge against earnings to absorb credit losses associated with on- or off-balance sheet wholesale and retail exposures, including the allowance for loan and lease losses (ALLL) associated with such exposures but excluding specific reserves created against recognized losses.

* * * * *

Excluded mortgage exposure means any one- to four-family residential pre-sold construction loan for a residence for which the purchase contract is cancelled that would receive a 100 percent risk weight under section 618(a)(2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act and under 12 CFR 567.1 (definition of ''qualifying residential construction loan'') and 12 CFR 567.6(a)(1)(iv).

* * * * *

Exposure at default (EAD). (1) For the on-balance sheet component of a wholesale exposure or segment of retail exposures (other than an OTC derivative contract, or a repo-style transaction, or eligible margin loan for which the savings association determines EAD under section 32 of this appendix), EAD means:

(i) If the exposure or segment is a security classified as available-for-sale, the savings associations carrying value (including net accrued but unpaid interest and fees) for the exposure or segment less any unrealized gains on the exposure or segment and plus any unrealized losses on the exposure or segment; or

(ii) If the exposure or segment is not a security classified as available-for-sale, the savings association's carrying value (including net accrued but unpaid interest and fees) for the exposure or segment.

* * * * *

Gain-on-sale means an increase in the equity capital (as reported on Schedule SC of the Thrift Financial Report) of a savings association that results from a securitization (other than an increase in equity capital that results from the savings association's receipt of cash in connection with the securitization).

* * * * *

High volatility commercial real estate (HVCRE) exposure * * *

(2) * * *

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the OTS's real estate lending standards at 12 CFR 560.100–560.101;

* * * * *

Traditional securitization * * *

(7) The underlying exposures are not owned by a firm an investment in which is designed primarily to promote community welfare, including the welfare of low- and moderate-income communities or families, such as by providing services or jobs.

* * * * *

■ i. Revise section 12 to read as follows:

Section 12 Deductions and limitations not required

(a) *Deduction of CEIOs.* A savings association is not required to make the deduction from capital for CEIOs in 12 CFR 567.5(a)(2)(iii) and 567.12(e).

(b) *Deduction for certain equity investments.* A savings association is not required to deduct equity securities from capital under 12 CFR 567.5(c)(2)(ii). However, it must continue to deduct equity investments in real estate under that section. *See* 12 CFR 567.1, which defines equity investments, including equity securities and equity investments in real estate.

■ j. Revise the fourth sentence of section 24(a) to read as follows:

Section 24 Merger and Acquisition Transition Arrangements

(a) *Mergers and acquisitions of companies without advanced systems.* * * * During the period when subpart A of this part applies to the merged or acquired company, any ALLL associated with the merged or acquired company's exposures may be included in the savings association's tier 2 capital up to 1.25 percent of the acquired company's risk-weighted assets. * * *

* * * * *

■ k. Revise the first sentence of paragraph (k)(1)(iv) and paragraph (k)(4) of section 42 to read as follows:

Section 42 Risk-Based Capital Requirement for Securitization Exposures

* * * * *

(k) * * *

(1) * * *

(iv) The savings association is well capitalized, as defined in the OTS's prompt corrective action regulation at 12 CFR part 565. * * *

* * * * *

(4) The risk-based capital ratios of the savings association must be calculated without regard to the capital treatment for transfers of small-business obligations with recourse specified in paragraph (k)(1) of this section as provided in 12 CFR 567.6(b)(5)(v).

* * * * *

■ l. Revise paragraph (b)(3)(i) of section 52 to read as follows:

Section 52 Simple Risk Weight Approach (SRWA)

* * * * *

(b) * * *

(3) * * *

(i) An equity exposure that is designed primarily to promote community welfare, including the welfare of low- and moderate-income communities or families, such as by providing services or jobs, excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a consolidated small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682).

* * * * *

■ m. Remove ''[Disclosure paragraph (b)]'' and add in its place ''(b) A savings association must comply with paragraph (c) of section 71 of this appendix unless it is a consolidated subsidiary of a depository institution or bank holding company that is subject to these requirements.''

■ n. Remove ''[Disclosure paragraph (c)].''

■ o. In section 71, add new paragraph (c) and Tables 11.1 through 11.11 to read as follows:

Section 71 Disclosure Requirements

* * * * *

(c)(1) Each consolidated savings association described in paragraph (b) of this section that is not a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction and has successfully completed its parallel run must provide timely public disclosures each calendar quarter of the information in tables 11.1–11.11 below. If a significant change occurs, such that the most recent reported amounts are no longer reflective of the savings association's capital adequacy and risk profile, then a brief discussion of this change and its likely impact must be provided as soon as practicable thereafter. Qualitative disclosures that typically do not change each quarter (for example, a general summary of the savings association's risk management objectives and policies, reporting system, and definitions) may be disclosed annually, provided any significant changes to these are disclosed in the interim. Management is encouraged to provide all of the disclosures required by this appendix in one place on the savings association's public Web site.[5] The savings association must make these disclosures publicly available for each of the last three years (twelve quarters) or such shorter period since it began its first floor period.

(2) Each savings association is required to have a formal disclosure policy approved by the board of directors that addresses its approach for determining the disclosures it makes. The policy must address the associated internal controls and disclosure controls and procedures. The board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over financial reporting, including the disclosures required by this appendix, and must ensure that appropriate review of the disclosures takes place. One or more senior officers of the savings association must attest that the disclosures required by this appendix meet the requirements of this appendix.

(3) If a savings association believes that disclosure of specific commercial or financial information would prejudice seriously its position by making public information that is either proprietary or confidential in nature, the savings association need not disclose those specific items, but must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed.

[5] Alternatively, a savings association may provide the disclosures in more than one place, as some of them may be included in public financial reports (for example, in Management's Discussion and Analysis included in SEC filings) or other regulatory reports. The savings association must provide a summary table on its public Web site that specifically indicates where all the disclosures may be found (for example, regulatory report schedules, page numbers in annual reports).

TABLE 11.1.—SCOPE OF APPLICATION

Qualitative Disclosures	(a) The name of the top corporate entity in the group to which the appendix applies. (b) An outline of differences in the basis of consolidation for accounting and regulatory purposes, with a brief description of the entities[6] within the group that are fully consolidated; that are deconsolidated and deducted; for which the regulatory capital requirement is deducted; and that are neither consolidated nor deducted (for example, where the investment is risk-weighted). (c) Any restrictions, or other major impediments, on transfer of funds or regulatory capital within the group.
Quantitative Disclosures	(d) The aggregate amount of surplus capital of insurance subsidiaries (whether deducted or subjected to an alternative method) included in the regulatory capital of the consolidated group. (e) The aggregate amount by which actual regulatory capital is less than the minimum regulatory capital requirement in all subsidiaries with regulatory capital requirements and the name(s) of the subsidiaries with such deficiencies.

TABLE 11.2.—CAPITAL STRUCTURE

Qualitative Disclosures	(a) Summary information on the terms and conditions of the main features of all capital instruments, especially in the case of innovative, complex or hybrid capital instruments.
Quantitative Disclosures	(b) The amount of tier 1 capital, with separate disclosure of: • Common stock/surplus; • Retained earnings; • Minority interests in the equity of subsidiaries; • Regulatory calculation differences deducted from tier 1 capital;[7] and • Other amounts deducted from tier 1 capital, including goodwill and certain intangibles. (c) The total amount of tier 2 capital. (d) Other deductions from capital.[8] (e) Total eligible capital.

TABLE 11.3.—CAPITAL ADEQUACY

Qualitative disclosures	(a) A summary discussion of the savings association's approach to assessing the adequacy of its capital to support current and future activities.

Quantitative disclosures	(b) Risk-weighted assets for credit risk from:
	• Wholesale exposures;
	• Residential mortgage exposures;
	• Qualifying revolving exposures;
	• Other retail exposures;
	• Securitization exposures;
	• Equity exposures
	  • Equity exposures subject to the simple risk weight approach; and
	  • Equity exposures subject to the internal models approach.
	(c) Risk-weighted assets for market risk as calculated under [the market risk rule]:[9]
	• Standardized approach for specific risk; and
	• Internal models approach for specific risk.
	(d) Risk-weighted assets for operational risk.
	(e) Total and tier 1 risk-based capital ratios:[10]
	• For the top consolidated group; and
	• For each DI subsidiary.

General qualitative disclosure requirement

For each separate risk area described in tables 11.4 through 11.11, the savings association must describe its risk management objectives and policies, including:

• strategies and processes;

• the structure and organization of the relevant risk management function;

• the scope and nature of risk reporting and/or measurement systems;

• policies for hedging and/or mitigating risk and strategies and processes for monitoring the continuing effectiveness of hedges/mitigants.

[6] Entities include securities, insurance and other financial subsidiaries, commercial subsidiaries (where permitted), and significant minority equity investments in insurance, financial and commercial entities.

[7] Representing 50 percent of the amount, if any, by which total expected credit losses as calculated within the IRB approach exceed eligible credit reserves, which must be deducted from tier 1 capital.

[8] Including 50 percent of the amount, if any, by which total expected credit losses as calculated within the IRB approach exceed eligible credit reserves, which must be deducted from tier 2 capital.

[9] Risk-weighted assets determined under [the market risk rule] are to be disclosed only for the approaches used.

[10] Total risk-weighted assets should also be disclosed.

TABLE 11.4.[11]—CREDIT RISK: GENERAL DISCLOSURES

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to credit risk (excluding counterparty credit risk disclosed in accordance with Table 11.6), including: • Definitions of past due and impaired (for accounting purposes); • Description of approaches followed for allowances, including statistical methods used where applicable; and • Discussion of the savings association's credit risk management policy.
Quantitative Disclosures	(b) Total credit risk exposures and average credit risk exposures, after accounting offsets in accordance with GAAP,[12] and without taking into account the effects of credit risk mitigation techniques (for example, collateral and netting), over the period broken down by major types of credit exposure.[13] (c) Geographic[14] distribution of exposures, broken down in significant areas by major types of credit exposure. (d) Industry or counterparty type distribution of exposures, broken down by major types of credit exposure. (e) Remaining contractual maturity breakdown (for example, one year or less) of the whole portfolio, broken down by major types of credit exposure. (f) By major industry or counterparty type: • Amount of impaired loans; • Amount of past due loans; [15] • Allowances; and • Charge-offs during the period. (g) Amount of impaired loans and, if available, the amount of past due loans broken down by significant geographic areas including, if practical, the amounts of allowances related to each geographical area.[16] (h) Reconciliation of changes in the allowance for loan and lease losses.[17]

TABLE 11.5.—CREDIT RISK: DISCLOSURES FOR PORTFOLIOS SUBJECT TO IRB RISK-BASED CAPITAL FORMULAS

Qualitative disclosures	(a) Explanation and review of the:
	• Structure of internal rating systems and relation between internal and external ratings;
	• Use of risk parameter estimates other than for regulatory capital purposes;
	• Process for managing and recognizing credit risk mitigation (see table 11.7); and
	• Control mechanisms for the rating system, including discussion of independence, accountability, and rating systems review.
	(b) Description of the internal ratings process, provided separately for the following:
	• Wholesale category;
	• Retail subcategories;
	  • Residential mortgage exposures;
	  • Qualifying revolving exposures; and
	  • Other retail exposures.
	For each category and subcategory the description should include:
	• The types of exposure included in the category/subcategories; and
	• The definitions, methods and data for estimation and validation of PD, LGD, and EAD, including assumptions employed in the derivation of these variables.[18]

Quantitative disclosures: risk assessment.	(c) For wholesale exposures, present the following information across a sufficient number of PD grades (including default) to allow for a meaningful differentiation of credit risk:[19] • Total EAD; [20] • Exposure-weighted average LGD (percentage); • Exposure-weighted average risk weight; and • Amount of undrawn commitments and exposure-weighted average EAD for wholesale exposures. For each retail subcategory, present the disclosures outlined above across a sufficient number of segments to allow for a meaningful differentiation of credit risk.
Quantitative disclosures: historical results.	(d) Actual losses in the preceding period for each category and subcategory and how this differs from past experience. A discussion of the factors that impacted the loss experience in the preceding period—for example, has the savings association experienced higher than average default rates, loss rates or EADs.

[11] Table 4 does not include equity exposures.

[12] For example, FASB Interpretations 39 and 41.

[13] For example, savings associations could apply a breakdown similar to that used for accounting purposes.

Such a breakdown might, for instance, be (a) loans, off-balance sheet commitments, and other non-derivative off-balance sheet exposures, (b) debt securities, and (c) OTC derivatives.

[14] Geographical areas may comprise individual countries, groups of countries, or regions within countries.

A savings association might choose to define the geographical areas based on the way the company's portfolio is geographically managed. The criteria used to allocate the loans to geographical areas must be specified.

[15] A savings association is encouraged also to provide an analysis of the aging of past-due loans.

[16] The portion of general allowance that is not allocated to a geographical area should be disclosed separately.

[17] The reconciliation should include the following: a description of the allowance; the opening balance of the allowance; charge-offs taken against the allowance during the period; amounts provided (or reversed) for estimated probable loan losses during the period; any other adjustments (for example, exchange rate differences, business combinations, acquisitions and disposals of subsidiaries), including transfers between allowances; and the closing balance of the allowance. Charge-offs and recoveries that have been recorded directly to the income statement should be disclosed separately.

TABLE 11.5.—CREDIT RISK: DISCLOSURES FOR PORTFOLIOS SUBJECT TO IRB RISK-BASED CAPITAL FORMULAS—Continued

	(e) Savings association's estimates compared against actual outcomes over a longer period.[21] At a minimum, this should include information on estimates of losses against actual losses in the wholesale category and each retail subcategory over a period sufficient to allow for a meaningful assessment of the performance of the internal rating processes for each category/subcategory.[22] Where appropriate, the savings association should further decompose this to provide analysis of PD, LGD, and EAD outcomes against estimates provided in the quantitative risk assessment disclosures above.[23]

TABLE 11.6.—GENERAL DISCLOSURE FOR COUNTERPARTY CREDIT RISK OF OTC DERIVATIVE CONTRACTS, REPO-STYLE TRANSACTIONS, AND ELIGIBLE MARGIN LOANS

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to OTC derivatives, eligible margin loans, and repo-style transactions, including: • Discussion of methodology used to assign economic capital and credit limits for counterparty credit exposures; • Discussion of policies for securing collateral, valuing and managing collateral, and establishing credit reserves; • Discussion of the primary types of collateral taken; • Discussion of policies with respect to wrong-way risk exposures; and • Discussion of the impact of the amount of collateral the savings association would have to provide if the savings association were to receive a credit rating downgrade.
Quantitative Disclosures	(b) Gross positive fair value of contracts, netting benefits, netted current credit exposure, collateral held (including type, for example, cash, government securities), and net unsecured credit exposure.[24] Also report measures for EAD used for regulatory capital for these transactions, the notional value of credit derivative hedges purchased for counterparty credit risk protection, and, for savings associations not using the internal models methodology in section 32(d) of this appendix, the distribution of current credit exposure by types of credit exposure.[25] (c) Notional amount of purchased and sold credit derivatives, segregated between use for the savings association's own credit portfolio and for its intermediation activities, including the distribution of the credit derivative products used, broken down further by protection bought and sold within each product group. (d) The estimate of alpha if the savings association has received supervisory approval to estimate alpha.

TABLE 11.7.—CREDIT RISK MITIGATION [26] [27] [28]

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to credit risk mitigation including: • Policies and processes for, and an indication of the extent to which the savings association uses, on- and off-balance sheet netting; • Policies and processes for collateral valuation and management; • A description of the main types of collateral taken by the savings association; • The main types of guarantors/credit derivative counterparties and their creditworthiness; and • Information about (market or credit) risk concentrations within the mitigation taken.
Quantitative Disclosures	(b) For each separately disclosed portfolio, the total exposure (after, where applicable, on-or off-balance sheet netting) that is covered by guarantees/credit derivatives.

[18] This disclosure does not require a detailed description of the model in full—it should provide the reader with a broad overview of the model approach, describing definitions of the variables and methods for estimating and validating those variables set out in the quantitative risk disclosures below. This should be done for each of the four category/subcategories. The savings association should disclose any significant differences in approach to estimating these variables within each category/subcategories.

[19] The PD, LGD and EAD disclosures in Table 11.5(c) should reflect the effects of collateral, qualifying master netting agreements, eligible guarantees and eligible credit derivatives as defined in part I. Disclosure of each PD grade should include the exposure-weighted average PD for each grade. Where a savings association aggregates PD grades for the purposes of disclosure, this should be a representative breakdown of the distribution of PD grades used for regulatory capital purposes.

[20] Outstanding loans and EAD on undrawn commitments can be presented on a combined basis for these disclosures.

[21] These disclosures are a way of further informing the reader about the reliability of the information provided in the "quantitative disclosures: risk assessment" over the long run. The disclosures are requirements from year-end 2010; in the meantime, early adoption is encouraged. The phased implementation is to allow a savings association sufficient time to build up a longer run of data that will make these disclosures meaningful.

[22] This regulation is not prescriptive about the period used for this assessment. Upon implementation, it might be expected that a savings association would provide these disclosures for as long a run of data as possible—for example, if a savings association has 10 years of data, it might choose to disclose the average default rates for each PD grade over that 10-year period. Annual amounts need not be disclosed.

[23] A savings association should provide this further decomposition where it will allow users greater insight into the reliability of the estimates provided in the "quantitative disclosures: risk assessment." In particular, it should provide this information where there are material differences between its estimates of PD, LGD or EAD compared to actual outcomes over the long run. The savings association should also provide explanations for such differences.

[24] Net unsecured credit exposure is the credit exposure after considering the benefits from legally enforceable netting agreements and collateral arrangements, without taking into account haircuts for price volatility, liquidity, etc.

[25] This may include interest rate derivative contracts, foreign exchange derivative contracts, equity derivative contracts, credit derivatives, commodity or other derivative contracts, repo-style transactions, and eligible margin loans.

TABLE 11.8.—SECURITIZATION

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to securitization (including synthetics), including a discussion of: • The savings association's objectives relating to securitization activity, including the extent to which these activities transfer credit risk of the underlying exposures away from the savings association to other entities; • The roles played by the savings association in the securitization process [29] and an indication of the extent of the savings association's involvement in each of them; and • The regulatory capital approaches (for example, RBA, IAA and SFA) that the savings association follows for its securitization activities. (b) Summary of the savings association's accounting policies for securitization activities, including: • Whether the transactions are treated as sales or financings; • Recognition of gain-on-sale; • Key assumptions for valuing retained interests, including any significant changes since the last reporting period and the impact of such changes; and • Treatment of synthetic securitizations. (c) Names of NRSROs used for securitizations and the types of securitization exposure for which each agency is used.
Quantitative Disclosures	(d) The total outstanding exposures securitized by the savings association in securitizations that meet the operational criteria in section 41 of this appendix (broken down into traditional/synthetic), by underlying exposure type.[30 31 32] (e) For exposures securitized by the savings association in securitizations that meet the operational criteria in Section 41 of this appendix: • Amount of securitized assets that are impaired/past due; and • Losses recognized by the savings association during the current period [33] broken down by exposure type. (f) Aggregate amount of securitization exposures broken down by underlying exposure type. (g) Aggregate amount of securitization exposures and the associated IRB capital requirements for these exposures broken down into a meaningful number of risk weight bands. Exposures that have been deducted from capital should be disclosed separately by type of underlying asset. (h) For securitizations subject to the early amortization treatment, the following items by underlying asset type for securitized facilities: • The aggregate drawn exposures attributed to the seller's and investors' interests; and • The aggregate IRB capital charges incurred by the savings association against the investors' shares of drawn balances and undrawn lines. (i) Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by asset type.

TABLE 11.9.—OPERATIONAL RISK

Qualitative Disclosures	(a) The general qualitative disclosure requirement for operational risk. (b) Description of the AMA, including a discussion of relevant internal and external factors considered in the savings association's measurement approach. (c) A description of the use of insurance for the purpose of mitigating operational risk.

TABLE 11.10.—EQUITIES NOT SUBJECT TO MARKET RISK RULE

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to equity risk, including: • Differentiation between holdings on which capital gains are expected and those held for other objectives, including for relationship and strategic reasons; and • Discussion of important policies covering the valuation of and accounting for equity holdings in the banking book. This includes the accounting techniques and valuation methodologies used, including key assumptions and practices affecting valuation as well as significant changes in these practices.

[26] At a minimum, a savings associagtion must provide the disclosures in Table 11.7 in relation to credit risk mitigation that has been recognized for the purposes of reducing capital requirements under this appendix. Where relevant, savings associations are encouraged to give further information about mitigants that have not been recognized for that purpose.

[27] Credit derivatives that are treated, for the purposes of this appendix, as synthetic securitization exposures should be excluded from the credit risk mitigation disclosures and included within those relating to securitization.

[28] Counterparty credit risk-related exposures disclosed pursuant to Table 11.6 should be excluded from the credit risk mitigation disclosures in Table 11.7.

[29] For example: originator, investor, servicer, provider of credit enhancement, sponsor of asset backed commercial paper facility, liquidity provider, or swap provider.

[30] Underlying exposure types may include, for example, one- to four-family residential loans, home equity lines, credit card receivables, and auto loans.

[31] Securitization transactions in which the originating savings association does not retain any securitization exposure should be shown separately but need only be reported for the year of inception.

[32] Where relevant, a savings association is encouraged to differentiate between exposures resulting from activities in which they act only as sponsors, and exposures that result from all other savings association securitization activities.

[33] For example, charge-offs/allowances (if the assets remain on the savings association's balance sheet) or write-downs of I/O strips and other residual interests.

TABLE 11.10.—EQUITIES NOT SUBJECT TO MARKET RISK RULE—Continued

Quantitative Disclosures	(b) Value disclosed in the balance sheet of investments, as well as the fair value of those investments; for quoted securities, a comparison to publicly-quoted share values where the share price is materially different from fair value. (c) The types and nature of investments, including the amount that is: • Publicly traded; and • Non-publicly traded. (d) The cumulative realized gains (losses) arising from sales and liquidations in the reporting period. (e) • Total unrealized gains (losses)[34] • Total latent revaluation gains (losses)[35] • Any amounts of the above included in tier 1 and/or tier 2 capital. (f) Capital requirements broken down by appropriate equity groupings, consistent with the savings association's methodology, as well as the aggregate amounts and the type of equity investments subject to any supervisory transition regarding regulatory capital requirements.[36]

TABLE 11.11.—INTEREST RATE RISK FOR NON-TRADING ACTIVITIES

Qualitative Disclosures	(a) The general qualitative disclosure requirement, including the nature of interest rate risk for non-trading activities and key assumptions, including assumptions regarding loan prepayments and behavior of non-maturity deposits, and frequency of measurement of interest rate risk for non-trading activities.
Quantitative Disclosures	(b) The increase (decline) in earnings or economic value (or relevant measure used by management) for upward and downward rate shocks according to management's method for measuring interest rate risk for non-trading activities, broken down by currency (as appropriate).

* * * * *

Dated: November 8, 2007.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 13, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

Dated at Washington, DC, this 5th day of November, 2007.

By Order of the Board of Directors. Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: October 29, 2007.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. 07–5729 Filed 12–6–07; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

[34] Unrealized gains (losses) recognized in the balance sheet but not through earnings.

[35] Unrealized gains (losses) not recognized either in the balance sheet or through earnings.

[36] This disclosure should include a breakdown of equities that are subject to the 0 percent, 20 percent, 100 percent, 300 percent, 400 percent, and 600 percent risk weights, as applicable.

Federal Register

Friday,

December 7, 2007

Part III

Department of State

Office of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2006; Notice

DEPARTMENT OF STATE

[Public Notice: 6007]

Office of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2006

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 2006 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute. Also, included are gifts received in previous years including 3 gifts in 1999, 2 gifts in 2000, 1 gift in 2001, 9 gifts in 2002, 3 gifts in 2003, 13 gifts in 2004 and 28 gifts in 2005. These latter gifts and expenses are being reported in 2006 as the Office of Protocol, Department of State, did not receive the relevant information to include them in earlier reports.

Publication of this listing in the **Federal Register** is required by Section 7342(f) of Title 5, United States Code, as added by Section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95–105, August 17, 1977, 91 Stat. 865).

Dated: November 28, 2007.

Patrick F. Kennedy,

Under Secretary for Management, Department of State.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: 15″ x 10″ color photograph of the "Emerald Buddha Temple (Laos)," signed by photographer; double matted and held in a 25″ x 21″ maple frame with a gold-tone bead accent trim and gold-tone rope border. Rec'd—January 5, 2006. Est. Value—$350. Disposition—Archives Foreign.	His Excellency Phanthong Phommahaxay, Ambassador of the Lao People's Democratic Republic and Mrs. Phommahaxay, Embassy of the Lao People's Democratic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household items (5): Meissen porcelain tea-for-two set, handpainted Blue Onion pattern consisting of: 4½″ porcelain sugar bowl with lid; 3″ x 3¾″ scalloped edged creamer; 7″ x 4½″ x 4½″ tea pot with lid; 4″ scalloped edged cups and saucers (2). Rec'd—January 13, 2006. Est. Value—$805. Disposition—Archives Foreign.. Book: "Meissen in Meissen," by Hans Sonntag. Rec'd—January 13, 2006. Est. Value—$13. Disposition—Archives Foreign.	Her Excellency Angela Merkel, Chancellor of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Accessory: 82″ x 132″ handwoven emerald green, fuchsia, indigo blue, orange and purple traditional Ghana Kente cloth with a stripe and geometric weft motif pattern. Rec'd—January 17, 2006. Est. Value—$487. Disposition—Archives Foreign.	His Excellency John Agyekum Kufuor, President of the Republic of Ghana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Athletic equipment: Brown leather horse saddle embossed to look like basket weave; leather bridle and orange and blue plaid horse blanket Rec'd—January 24, 2006. Est. Value—$1,000. Disposition—Archives Foreign.	His Excellency Shaukat Aziz Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: 30″ x 19″ multi-color painting "Reconciliation" by Helen Zogheib, image of three religious buildings in downtown Beirut, signed and dated; held in a 33½″ x 24″ guilt wood frame Rec'd—January 27, 2006. Est. Value—$2,200. Disposition—Archives Foreign.	His Excellency Saad R. Hariri, Lebanese Member of Parliament.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Poster: 27½″ x 38½″ Solidarity Citizens' Committee election campaign poster by Tomasz Sarnecki, "It's High Noon, 4 June 1989" featuring a modified image of Gary Cooper carrying a ballot and wearing the Solidarity logo—SOLIDARNOSC. A brushed silver-tone presentation plate affixed to the glass is engraved in Polish, "His Excellency George W. Bush, President of the United States, Lech Kaczynski, President of the Republic of Poland, Washington, 9 February 2006"; held in a 28″ x 39″ brushed silver-tone metal frame. Rec'd—February 9, 2006. Est. Value—$1,165. Disposition—Archives Foreign.	His Excellency Lech Kaczynski, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household items (12): 5½″ x 6″ and 4″ x 4″ handcarved wooden bowls accented with multi-colored beads on handles; 5″ (4) and 5½″ (4) handcarved wooden spoons accented with multi-colored beaded band; 6″ handcarved wooden spoon accented with multi-colored beaded band; 4″ x 4″ handcarved wooden bucket with lid and metal swing handle. Rec'd—February 10, 2006. Est. Value—$595. Disposition—Archives Foreign.. Craft: 4″ gourd decorated with a red, white and blue geometric pattern close woven beadwork net, with a 3″ single beaded string as carrying loop. Rec'd—February 10, 2006. Est. Value—$175. Disposition—Archives Foreign.	The Honorable Rebecca Garang De Mabior, Minister of Transportation, Roads and Bridges Government of South Sudan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household item: 11″ x 12″ x 2″ white porcelain round cake plate with ½″ molded gold handles, replica from the official Presidential china, with gold and cobalt blue rim painted "Palacio Presidencial San Salvador" surrounding the national coat of arms in the center. Rec'd—February 24, 2006. Est. Value—$350. Archives Foreign..	His Excellency Elias Antonio Saca Gonzalez, President of the Republic of El Salvador.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Smoking accessory: 6″ x 6″ wave design Nachtmann crystal cigar ashtray frosted with the El Salvador coat of arms. Rec'd—February 24, 2006. Est. Value—$115. Disposition—Archives Foreign.		
President	Photograph: 12″ x 8″ color photograph of Mrs. Laura Bush, His Excellency Silvio Berlusconi and Miss Barbara Bush on February 9, 2006 at the Villa Madama in Rome; held in a 13″ x 9″ Bottega Dell'Argento silver frame with leaf detail at each corner. Rec'd—February 28, 2006. Est. Value—$454. Disposition—Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household item: 11″ round lapis lazuli mosaic bowl with ½″ foot. Rec'd—March 1, 2006. Est. Value—$1,500. Disposition—Archives Foreign.	His Excellency Hamid Karzai, Chairman of the Interim Authority of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household item: 38″ lapis lazuli mosaic urn with fluted top and circular base, accented with sterling silver detail at neck and base. Rec'd—March 1, 2006. Est. Value—$7,500. Disposition—Archives Foreign.	His Excellency Hamid Karzai, Chairman of the Interim Authority of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Miscellaneous: 12″ x 11″ black wood hand operated "spinning wheel" with spokes and rests on an base in a clear plastic case. Rec'd—March 2, 2006. Est. Value—$60. Disposition—Archives Foreign..	The Honorable Nirmal Deshpande, M.P. Rajya Sabha Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Miscellaneous: Yellow linen scroll with the "Seven Social Sins." Rec'd—March 2, 2006. Est. Value—$7. Disposition—Archives Foreign..		
	Books, hardcover (3): *Mahatma Gandhi 100 Years,* by S. Radhakrishnan, *The Mind of Mahatma Gandhi,* by R.K. Prabhu; and *An Autobiography,* by M.K. Gandhi. Rec'd—March 2, 2006. Est. Value—$45. Disposition: President retained..		
	Artwork: Bronze wax cast bust of Gandhi on base in case with a gold-tone presentation plaque printed "Mohandas Karamchand Gandhi Oct. 2, 1869 to Jan. 30, 1948," by Ram Sutar; signed and numbered 903. Rec'd—March 2, 2006. Est. Value—$500. Disposition—Archives Foreign.		

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Household item: 50″ x 30″ silk rug with taupe, tan, rose and slate blue intricate floral pattern. Rec'd—March 2, 2006. Est. Value—$1,000. Disposition—Archives Foreign..	His Excellency A.P.J. Abdul Kalam, President of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Flowers: Bouquet of flowers. Rec'd—March 2, 2006. Est. Value—$30. Disposition—Handled pursuant to Secret Service policy.		
President	Artwork: 9″ x 5″ x 2″ pure silver filigree chariot and two horses mounted on a 11½″ x 4″ x 2″ two-tiered velvet base enclosed in a 11″ x 3½″ x 9″ plastic case with a presentation plate from the Vice Chancellor of the University of Agriculture and a presentation plate from Dr. Y.S. Rajasekhara Reddy. Rec'd—March 3, 2006. Est. Value—$450. Disposition—Archives Foreign.	The Honorable Y.S. Rajasekhara Reddy, Chief Minister Andhra Pradesh, Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 21″ x 12″ x 1″ intricate sandal wood carving of an Indian God Vishwaroopa, in Mahabharatha, battlefield, with nine heads and multiple arms with horses and people bowing at it's feet, mounted on a 10″ x 4″ oval wood base. Rec'd—March 3, 2006. Est. Value—$9,900. Disposition—Archives Foreign.	The Honorable Y.S. Rajasekhara Reddy, Chief Minister Andhra Pradesh, Republic of India. The Honorable Rameshwar Thakur, Governor of Andhra Pradesh, Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household item: 6′1″ x 9′9″ wool Pakistan rug with taupe, slate blue, salmon, black, purple, yellow and gray ornate floral design. Rec'd—March 4, 2006. Est. Value—$2,700. Disposition—Archives Foreign.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household item: 14½″ x 9″ x 26½″ hand-carved wood Asante ceremonial stool with crescent-shape seat set over a flat base and complex support structure with geometric pattern. Rec'd—March 6, 2006. Est. Value—$2,200. Disposition—Archives Foreign.	His Excellency Mathieu Kerekoum, President Republic of Benin.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Collectable: 4″ x 4″ wooden gourd intricately tooled with floral and geometric design, adorned with a sterling silver butterfly on top; held on a 5″ sterling silver round display base. Rec'd—March 10, 2006. Est. Value—$275. Disposition—Archives Foreign..	His Excellency Alejandro Toledo Manrique, President of the Republic of Peru.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Books, hardcover (2): "Machu Picchu, Santuario Historico—Historical Sanctuary," by Peter Frost. Rec'd—March 10, 2006. Est. Value—$150. Disposition—Archives Foreign..		

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Collectables (2): 6½″ x 9½″ old, possibly antique, wooden Nicho frames with floral carving, accented with elaborate sterling silver detail. Rec'd—March 10, 2006. Est. Value—$1,000. Disposition—Archives Foreign.		
President	Athletic equipment (2): gray and navy blue short-sleeved cycling jerseys with a patriotic stripe and "George W. Bush" on the front and reverse, the Vermarc logo, images of the Belgium flag and the American flag on the front. Rec'd—March 14, 2006. Est. Value—$228. Disposition—Archives Foreign..	His Excellency Guy Verhofstadt, Prime Minister of Belgium.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Vermarc Bib Tights with a patriotic stripe "George W. Bush." Rec'd—March 14, 2006. Est. Value—$185. Disposition—Archives Foreign..		
	Tights with a patriotic stripe and "George W. Bush." Rec'd—March 14, 2006. Est. Value—$185. Disposition—Archives Foreign..		
	Zip front long-sleeved Jacket. Rec'd—March 14, 2006. Est. Value—$255. Disposition—Archives Foreign..		
	Zip front long-sleeved Jacket. Rec'd—March 14, 2006. Est. Value—$255. Disposition—Archives Foreign.		
President	Household item: 10″ Waterford crystal "Killarney" footed bowl with flared lip etched "Presented to George W. Bush, President of the United States of America, on the Occasion of St. Patrick's Day 2006, By The Taoiseach Mr. Bertie Ahern T.D., on Behalf of the People of Ireland." Rec'd—March 17, 2006. Est. Value—$300. Disposition—Archives Foreign.	His Excellency Bertie Ahern, T.D., Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Athletic Equipment: Royal blue Vermarc Sport TVX fabric bike shirt printed with the "NATO OTAN" logo on the left lapel and right sleeve, the "Bike & Accessories Dennis Tervuren" logo on the right lapel and left sleeve, and "Vermarc Sports" on the collar and pocket on the reverse. Rec'd—March 20, 2006. Est. Value—$79. Disposition—Archives Foreign..	His Excellency Jaap de Hoop Scheffer, Secretary General of the North Atlantic Treaty Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	DVD (2 part set): "Rembrant 400 Jaar." Rec'd—March 20, 2006. Est. Value—$31. Disposition—Archives Foreign.		

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: 17″ x 15″ Pyrography (burnt wood) portrait of President and Mrs. Bush, by Aaron F. Brown, titled "President George Bush, First Lady Laura Bush, United States of America" on balsa wood; held in a 23″ x 21″ mottled finish wood frame; signed and dated by artist. Rec'd—March 21, 2006. Est. Value—$292. Disposition—Archives Foreign.	Her Excellency Ellen Johnson Sirleaf, President of the Republic of Liberia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household accessory: 5¼″ x 1½″ sterling silver hinged box adorned with the Hellenic Republic emblem and etched with donor's signature on lid. Rec'd—March 25, 2006. Est. Value—$500. Disposition—Archives Foreign.	Her Excellency Dora Bakoyannis, Minister of Foreign Affairs of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household accessories (3): Set of three 8″, 10″ and 12″ square concave style fused glass art plates with black and marbled amber checkerboard pattern center and black border; signed by artist James Lavoie on back. Rec'd—March 29, 2006. Est. Value—$415. Disposition—Archives Foreign.	The Right Honorable Stephen Harper, P.C., M.P., Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household accessory: 8″ x 1½″ sterling silver Plata Real "Mestizo Vessel" footed with 3½″ sterling silver rings. Rec'd—March 29, 2006. Est. Value—$400. Disposition—Archives Foreign.	His Excellency Vicente Fox Quesada, The President of the United Mexican States and Mrs. Fox.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Cloth: 128″ x 86″ handwoven emerald green, gold, black, royal blue and fuchsia traditional Ghana Kente cloth with a stripe and geometric weft motif pattern. Rec'd—April 12, 2006. Est. Value—$325. Disposition—Archives Foreign.. Miscellaneous: Hand-carved wooden images of four parading wood elephants held in a double matted 41″ x 17″ shadowbox. Rec'd—April 12, 2006. Est. Value—$750. Disposition—Archives Foreign.	His Excellency John Agyekum Kufuor, President of the Republic of Ghana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book, hardcover (in English and Arabic): "Beyrouth et le Sultan—Beirut and the Sultan: 200 Photographies des Albums de Abdul Hamid II (1876—1909)"; by Sawsan Agha Kassab and Khalad Omar Tadmori. Rec'd—April 17, 2006. Est. Value—$70. Disposition—Archives Foreign..	His Excellency Fuad Siniora, Prime Minister of the Republic of Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Household item (limited edition, 19/50): 9½″ glazed, hand-painted ceramic on hand-hammered copper Islamic replica plate from a 13th century design, "The Spouted Kamares Pot (Byblos 1950—1950 B.C.)"; marked "Fait main Atlier Chehab Liban 19/50" ("Handmade House of Chehab Liban 19/50") on back. Rec'd—April 17, 2006. Est. Value—$270. Disposition—Archives Foreign.		
President	Household accessory: 20″ round porcelain carved charger with the portrait of President and Mrs. Bush. Rec'd—April 20, 2006. Est. Value—$350. Disposition—Archives Foreign..	His Excellency Hu Jintao, President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Household accessory: 24″ rosewood charger holder with intricately carved detail. Rec'd—April 20, 2006. Est. Value—$50. Disposition—Archives Foreign.		
President	Jewelry: Cartier Santos Dumont watch with 18kt white gold case, guilloche dial with roman numerals, black alligator strap with 18kt white gold adjustable deployment buckle, hand wound mechanical movement adorned with a cabochon sapphire crystal. Rec'd—April 20, 2006. Est. Value—$11,100. Disposition—Archives Foreign.	His Excellency Thaksin Shinawatra, Prime Minister of the Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household accessory: 59″ x 85″ multicolored Azerbaijan silk rug handwoven with the portrait of President and Mrs. Bush, the Presidential seal, the U.S. Capitol, the New York City skyline, the Statue of Liberty, The White House, and the Presidential Palace in Baku, Azerbaijan, accented with a floral pattern border; designed by Hagiyev Eldar. Rec'd—April 28, 2006. Est. Value—$2,450. Disposition—Archives Foreign..	His Excellency Ilham Aliyev, President of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	DVD: "Memory: USA 09.09.2000." Rec'd—April 28, 2006. Est. Value—$15. Disposition—Archives Foreign..		
	Photographs (28): 12″ x 8″ color photographs documenting former Azerbaijan President Haidar Aliyev's informal visit with former President George H.W. Bush in Kennebunkport, Maine on September 9, 2000; in a 12″ hunter green album. Rec'd—April 28, 2006. Est. Value—$130. Disposition—Archives Foreign.		

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Miscellaneous: 8 x 30 BT black Zeiss Conquest binoculars. Rec'd—May 3, 2006. Est. Value—$579. Disposition—Archives Foreign.	Her Excellency Angela Merkel, Chancellor of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 23″ x 19″ pastoral oil on canvas ''Campo en Rio Negro'' by Uruguayan artist Philip Davies, held in a 33″ x 29″ gold bordered linen shadowbox frame surrounded by a paneled wood outer frame; signed and dated by artist. Rec'd—May 4, 2006. Est. Value—$750. Disposition—Archives Foreign..	His Excellency Tabare Vazquez, President of the Oriental Republic of Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Book, hardcover (in Spanish): ''El mate,'' by Fernando Assuncao; inscribed by donor. Rec'd—May 4, 2006. Est. Value—$40. Disposition—Archives Foreign..		
	Household item: Leather Mate Set including: Mate (tea), Yerba Container, silver Bombilla (drinking straw), and thermos; held in a 13″ x 9″ x 5″ leather carrying case. Rec'd—May 4, 2006. Est. Value—$195. Disposition—Archives Foreign.		
President	Books, leatherbound (3): ''A Shorter History of Australia,'' by Geoffrey Blainey; ''Monash: The Outsider Who Won A War,'' by Roland Perry; ''Gallipoli,'' by Les Carlyon, covers embossed in gold ''Presented by The Honourable John Howard MP, Prime Minister of Australia'' with the Australian Coat of Arms; all held in a 10½″ x 7″ folding book box embossed in gold on the front with the Australian Coat of Arms. Rec'd—May 16, 2006. Est. Value—$700. Disposition—Archives Foreign.	The Honorable John Howard, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 19″ x 25″ oil on canvas painting featuring doves and a brightly colored nature scene, by Benigno Gomez, held in a 23″ x 29″ gold frame; signed by artist. Rec'd—June 5, 2006. Est. Value—$500. Disposition—Archives Foreign..	His Excellency Jose Manuel Zelaya Rosales, President of the Republic of Honduras.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Artwork: 11″ x 17″ cartoon featuring President Bush holding an American flag, held in a 21″ x 27″ gold and red frame. Rec'd—June 5, 2006. Est. Value—$100. Disposition—Archives Foreign.		

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Household items (8): 8″ white wine goblets with 4″ copper stem adorned with five round lapis lazuli inlay stones around base (6) and a matching 8¾″ pair of red wine goblets. Rec'd—June 8, 2006. Est. Value—$400. Disposition—Archives Foreign.	Her Excellency Michelle Bachelet, President of the Republic of Chile.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing (L): Red and white Nalini cycling jersey; printed with Danish flag and Nalini logo on front and "George W. Bush" on left sleeve. Rec'd—June 10, 2006. Est. Value—$95. Disposition—Archives Foreign. Household item: 6″ x 13″ Royal Copenhagen Porcelain bowl; side of bowl depicts various battle scenes led by General Washington. Bowl commemorates the Bicentennial of The Declaration of Independence; certified bowl No. 2,417 of 2,500. Rec'd—June 10, 2006. Est. Value—$995. Disposition—Archives Foreign.	His Excellency Anders Fogh Rasmussen, Prime Minister of Denmark.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk accessories (24): 3½″ cast pewter coasters designed with six different Australian native flowers, held in a 8¾″ x 8¾″ wooden box with a brass presentation plate inside engraved, "Presented to the President of the United States of America and Members of Cabinet by the Honourable John Howard MP, Prime Minister of Australia on the occasion of his Official Visit to the United States of America, May 2006. The Australian native flowers represented on these cast pewter coasters are the Golden Wattle, Waratah, Blue Gum, Bottlebrush, Kangaroo Paw and Sturt's Desert Pea." Rec'd—June 16, 2006. Est. Value—$415. Disposition—Archives Foreign.	The Honorable John Howard, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	CDs: Box set of "Mozart Complete Edition" including: "Symphonies," "Serenades Dances Marches," "Divertimenti-Serenades," "Piano Concertos," "Violin Concertos, Wind Concertos," "Quintets, Quartets, Trio, etc.," "String Quartets, String Quintets," "Violin Sonatas, String Duos and Trios," "Piano Music," "Missae-Requiem, Organ Sonatas and Solos," "Litanies-Vespers, Oratorios-Cantatas, Masonic Music," "Arias, Vocal Ensembles, Canons-Lieder-Notturni," "Early Italian Operas," "Middle Italian Operas," "Late Italian Operas," "German Operas," and "Theatre and Ballet Music, Rarities-Surprises." Rec'd—June 20, 2006. Est. Value—$1,276. Disposition—Archives Foreign.	His Excellency Heinz Fischer, Federal President of the Republic of Austria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book, hardcover: "Austria: Introduction and Reminiscence," by Ernst Hauser. Rec'd—June 20, 2006. Est. Value—$33. Disposition—Archives Foreign.. Household accessory: 1¾″ x 1¼″x 4″ Swarovski clear crystal figurine of a white stallion standing on its hind legs with Jet crystal eyes and frosted flowing mane and tail from the Horses on Parade collection; anchored on 1⅝″ clear crystal base. Rec'd—June 20, 2006. Est. Value—$265. Disposition—Archives Foreign.	His Excellency Hubert Gorbach, Vice Chancellor of the Republic of Austria and Mrs. Margot Gorbach.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing (size 42): Navy blue cashmere mens Schneiders, Salzburg "Hubertus" outerwear coat with personalized cloth name plate embroidered "G.W.B." on inside breast pocket. Rec'd—June 20, 2006. Est. Value—$1,500. Disposition—Archives Foreign.	His Excellency Wolfgang Schuessel, Chancellor of the Republic of Austria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing: Pair of handcrafted black leather Hungarian Huszar riding boots style XVI–XVIL, with off-white leather "W" stitched on side and brass presentation plate engraved "To President George W. Bush, From Prime Minister Ferenc Gyurcsany" affixed to shoe sole on right boot; made by Ivan Sasvari. Rec'd—June 22, 2006. Est. Value—$935. Disposition—Archives Foreign.	His Excellency Ferenc Gyurcsany, Prime Minister of the Republic of Hungary.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Book, hardcover: "The Hungarian Hussar," by Jozsef Zachar. Rec'd—June 22, 2006. Est. Value—$28. Disposition—Archives Foreign. Accessory: Pair of wood handled boot hooks. Rec'd—June 22, 2006. Est. Value—$4. Disposition—Archives Foreign.		
President	Athletic equipment: Sunstar Electric-Power Assisted bicycle Rec'd—June 29, 2006. Est. Value—$1,000. Disposition—Archives Foreign.	His Excellency Junichiro Koizumi, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Poster: 23″ x 33″ print of a black and white picture featuring Babe Ruth traveling among a parade of people when visiting Japan and an 8″ x 12″ enlargement of Japanese Babe Ruth commemorative ("American Japanese, Baseball Matches, Under the Auspices of, the Yomiuri Shimbunsha") postage stamp, single matted and held in a 30″ x 41″ wooden frame; includes "tanka" (poem) by Shiki Masaoka, handwritten in Japanese by donor with printed English translation; signed by donor. Rec'd—June 29, 2006. Est. Value—$355. Disposition—Archives Foreign.		
	CD: "Junichiro Koizumi Presents: My Favorite Elvis Songs," produced by donor. Rec'd—June 29, 2006. Est. Value—$50. Disposition—Archives Foreign.		
President	Print of the original Appeal of the Representatives of Khevsureti to the United States Government written on June 24, 1936 by the freedom fighters from Georgia's mountainous region of Khevsureti, in the High Caucasus, superimposed with English translation and image of the freedom fighters from Georgia's mountainous region of Khevsureti; held in a painted gold-tone frame. Rec'd—July 5, 2006. Est. Value—$40. Disposition—Archives Foreign.	His Excellency Mikheil Saakashvili, President of Georgia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Photo album with the Appeal of the Representatives of Khevsureti to the United States, 16 color photographs of Khevsureti with 4 black and white photographs of Khevsureti people. Rec'd—July 5, 2006. Est. Value—$116. Disposition—Archives Foreign.		

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Jewelry: Gold and enamel Icon crucifix on a gold-tone chain. Rec'd—July 5, 2006. Est. Value—$375. Disposition—Archives Foreign.		
President	Accessory: Fuchsia silk Vakko tie embroidered with an intricately woven floral pattern. Rec'd—July 6, 2006. Est. Value—$80. Disposition—Archives Foreign..	His Excellency Abdullah Gul, Deputy Prime Minister and Minister of Foreign Affairs of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Jewelry: ½″ pair of Atasay contemporary black onyx cufflinks with gold-tone settings. Rec'd—July 6, 2006. Est. Value—$344. Disposition—Archives Foreign.		
President	Household accessories (2): 3½″ x 9″ and 4″ x 12″ handpainted blown glass "Garden Vases," decorated with colorful flowers; designed by Jennifer Stuart. Rec'd—July 6, 2006. Est. Value—$80. Disposition—Archives Foreign..	The Right Honorable Stephen Harper, P.C., M.P., Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Accessory: Pair of silver cufflinks with blue circular center. Rec'd—July 6, 2006. Est. Value—$175. Disposition—Archives Foreign..		
	Accessory: 7⅜″ brown felt Biltmore-Canada hat. Dark brown belt wraps around center of hat with matching chin straps. Rec'd—July 6, 2006. Est. Value—$179. Disposition—Archives Foreign..		
	Accessory: Belt buckle with the Calgary 2006 stampede logo. Rec'd—July 6, 2006. Est. Value—$43. Disposition—Archives Foreign.		
President	Clothing: Khaki golf pants; silver "NES Golf" logo on back right pocket. Rec'd—July 10, 2006. Est. Value—$79. Disposition—Archives Foreign..	His Excellency Janez Jansa, Prime Minister of the Republic of Slovenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Clothing (size unknown): Light and dark brown polo golf shirt; "Golf NES" stitched on front with window pane design. Rec'd—July 10, 2006. Est. Value—$60. Disposition—Archives Foreign. Clothing: Navy pullover with red and green argyle design. Zipper and "NES" stitched on front. Rec'd—July 10, 2006. Est. Value—$95. Disposition—Archives Foreign..		
	Clothing: Black warm up suit; two piece with NES stitched on the jacket and pants. Rec'd—July 10, 2006. Est. Value—$410. Disposition—Archives Foreign..		

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Artwork: 15″ x 7″ bronze Lipizzaner horse sculpted by Mitja Bovcan. Rec'd—July 10, 2006. Est. Value—$500. Disposition—Archives Foreign.		
President	Poster: 19″ x 24½″ replica poster of an antique world map from the Blaeu-Atlas of 1649. Rec'd—July 13, 2006. Est. Value—$30. Disposition—Archives Foreign.	The Honorable Harald Lastovka, Mayor of Stralsund, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk accessory: 6″ x 2″ x 3″ L'Epee carriage clock with Roman numeral hour markers on white face, guilded brass case, a "visable escapement" and engraved "Presidence de la Republique Francaise" on back at base. Rec'd—July 15, 2006. Est. Value—$1,961. Disposition—Archives Foreign.	His Excellency Jacques Chirac. President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 32″ x 12″ wood statue of carved eagle holding a fish; black carved map of Insel Rugen on base. Rec'd—July 16, 2006. Est. Value—$500. Disposition—Archives Foreign.	The Honorable Andrea Koester, Mayor of Bergen Auf Ruögen, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables (75): Two bundles of 25 Puros Indios Churchill 7″ cigars; one bundle of 25 Hoyo de Monterrey Excalibur #1 7″ cigars held in a humidor. Rec'd—July 20, 2006. Est. Value—$402. Disposition—Handled pursuant to Secret Service policy..	His Excellency Jose Manuel Zelaya Rosales, President of the Republic of Honduras.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Smoking accessory: 14½″ x 8¾″ x 6″ Spanish cedar humidor, elaborately carved design on sides and top of lid framing two woodburned and carved National seals side by side: Honduras and United State above lettering brushed in goldleaf: "George W. Bush, Presidente de EE. UU." Inside of lid is carved with goldleafed lettering: " A Mi Grande y Buen Amigo. Como Simbolo de Nuestra Amistad, Respecto y Valores Compartidos. Manuel Zelaya Rosales, Presidente de Honduras." Interior dimensions 12¼″ x 7¼″ x 4¼″, felt lined. Rec'd—July 20, 2006. Est. Value—$730. Disposition—Archives Foreign.		

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Desk accessory: 16″ sterling silver date palm tree with hand-hammered trunk and finely cut palm leaves with three bunches of gold dates, tree has oval shape base with florentine finish; held in a 19″ x 12″ glass presentation case with black velvet lined base. Rec'd—July 25, 2006. Est. Value—$1,500. Disposition—Archives Foreign.	His Excellency Nouri al-Maliki, Prime Minister of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household items—coffee set: 12″ sterling silver coffee pot with brown leather wrapped handle, 2″ white, hand-painted J. Seignolles, Limoges ''Meridien'' porcelain coffee cups with shiny platinum garland and fine hairline on inner edge band (6); held in a 19½″ x 15½″ red leather hinged presentation box adorned with the State of Kuwait coat of arms mounted on an 8″ gold-tone plate printed ''Aldiwan Alamiri'' in English and Arabic, and a gold-tone presentation plate engraved ''With compliments, of, H.H. Shaikh Sabah Al-Ahmad Al-Jaber Al-Sabah, Amir of the State of Kuwait, To, The Hon. George W. Bush, President of the United States of America'' on the outside lid, with the State of Kuwait coat of arms mounted on an 8″ silver-tone plate printed ''Aldiwan Alamiri'' in English and Arabic on the inside lid. Rec'd—September 5, 2006. Est. Value—$1,500. Disposition—Archives Foreign.	His Highness Sheikh Sabah Al-Ahmed Al-Jaaber Al-Sabah, Amir of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household accessory: 13″ speckled-brown and Korean blue dragon vase, painted with a continuous five clawed dragon with scattered flaming pearl devices, and a straight wide neck with a collared rim, made by Park, Kung Sun; signed on bottom. Rec'd—September 14, 2006. Est. Value—$3,500. Disposition—Archives Foreign.	His Excellency Roh Moo-hyun, President of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Collectable: 4½″ x 2″ x 7″ handcrafted, silver-enameled (Meenakari) bald eagle perched on a rock; mounted on a 4½″ oval shape dark wood base. Rec'd—September 14, 2006. Est. Value—$1,200. Disposition—Archives Foreign.	His Excellency Manmohan Singh Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Household items: Puiforcat Century Limoges porcelain espresso set consisting of: 2″ porcelain chocolate brown coffee cups with silver-tone trim (2); 5″ off-white saucers with a bold chocolate brown stripe and silver-tone trim (2). Rec'd—September 19, 2006. Est. Value—$240. Disposition—Archives Foreign..	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Household item: 14″ x 11″ sterling silver Christofle ''Prelude'' rectangular tray engraved with an intricate rope design on the front and ''Presidence de la Republique Francaise'' on the back. Rec'd—September 19, 2006. Est. Value—$400. Disposition—Archives Foreign.		
President	Desk accessory: 16″ sterling silver date palm tree with hand-hammered trunk and finely cut palm leaves with three bunches of sterling silver dates, tree has oval shape base with florentine finish; held in a 19″ x 12″ glass presentation case with black velvet lined base. (Damaged upon arrival.) Rec'd—September 19, 2006. Est. Value—$2,000. Disposition—Archives Foreign..	His Excellency Jalal Talabani, President of the Transitional Government of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Book, hardcover (printed in Turkish): ''Gravurlerle Kurtler: Bi Gravuran Kurd (''Kurds in Engravings or Etchings''), by Mehmet Bayrak; inscribed by donor. Rec'd—September 19, 2006. Est. Value—$70. Disposition—Archives Foreign..		
	Sculpture: 9″ x 5″ metal sculpture of a Middle Eastern man's face, mounted on brown leather, stamped with a shell border; in a wood shadow box with a geometric pattern border. Rec'd—September 19, 2006. Est. Value—$135. Disposition—Archives Foreign.		
President	Artwork: 23½″ x 17½″ oil on canvas painting featuring a scene of two people in the woods walking by a cabin, held in a 33″ x 27″ speckled wood frame; signed and dated by artist. Rec'd—September 20, 2006. Est. Value—$350. Disposition—Archives Foreign.	His Excellency Jose Manuel Zelaya Rosales, President of the Republic of Honduras.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household accessory: 69″ dark wood four paneled hinged screen with intricately carved detail and gold-tone floral inlay. Rec'd—September 21, 2006. Est. Value—$425. Disposition—Archives Foreign.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Household item: 118″ x 81″ finely woven wool Afghan rug with 5″ fringe; medallion style design in ivory, rust, navy, and burgundy. Rec'd—September 26, 2006. Est. Value—$4,800. Disposition—Archives Foreign.	His Excellency Hamid Karzai, Chairman of the Interim Authority of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Miscellaneous: 7″ x 2″ silver hinged dome-shaped yurta embellished with semi-precious stones and intricate gold medallions, held on a 10″ x 6″ silver carriage led by silver harnessed bulls mounted on a 22″ x 17″ marble base with silver trim and feet; mounted on a 26″ x 15″ brown wood base with a 25″ x 13½″ brown leather top with two buckled straps. Rec'd—September 29, 2006. Est. Value—$2,500. Disposition—Archives Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household accessory: 46″ x 30″ taupe, rose, burgundy, slate blue, gold, red, and green silk rug knotted with a nature scene and ornate floral pattern. Rec'd—October 2, 2006. Est. Value—$1,800. Disposition—Archives Foreign.	His Excellency Recep Tayyip Erdogan, Prime Minister of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 4′ x 5′ original oil on canvas "Monumental Alliance," by Charles Billich, featuring a collage of famous American monuments and statues in Washington, D.C., held in a 67″ x 55″ painted gold guilt wood frame with a gold-tone presentation plate engraved "To the President of the United States of America, George W. Bush, Presented by the Prime Minister of the Republic of Croatia, Dr. Ivo Sanader, Painting by Charles Billich, 'Monumental Alliance,' Washington, D.C. October 17, 2006"; signed by artist on front and inscribed on back. Rec'd—October 17, 2006. Est. Value—$5,800. Disposition—Archives Foreign.	His Excellency Ivo Sanader, Prime Minister of the Republic of Croatia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book, hardcover: "10 Years of a Vision," by donor. Rec'd—October 25, 2006. Est. Value—$50. Disposition—Archives Foreign.. Smoking accessories (24): Davidoff Aniversario No. 3 cigars with "Specially Made for President George W. Bush" printed on the packaging. Rec'd—October 25, 2006. Est. Value—$368. Disposition—Handled pursuant to Secret Service policy..	His Excellency Leonel Fernandez, President of the Dominican Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Artwork: 30″ x 24″ oil on canvas painting of red and white flowers in a green vase; held in a 41″ x 34″ wooden frame. Rec'd—October 25, 2006. Est. Value—$650. Disposition—Archives Foreign.		
President	Miscellaneous: Creative Zen Vision "W" widescreen 60GB "Entertainment on the Move," portable media player featuring a 2¼″ x 4″ screen. Rec'd—November 16, 2006. Est. Value—$400. Disposition—Archives Foreign.	His Excellency Lee Hsien Loong, Prime Minister and Minister for Finance of the Republic of Singapore and Mrs. Ho Ching.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 22″ x 30″ portrait of President Bush made with Rubies and various gemstones; held in an ornate gold leaf frame with gold-tone presentation plate engraved, "H.E. George Walker Bush, President of the United States of America: With the Best Compliments from Tran Chau Ngoc Viet Company." Rec'd—November 17, 2006. Est. Value—$650. Disposition—Archives Foreign.	Mr. Le Sy Vuong Ha, Chief of Protocol, Ministry of Foreign Affairs of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 14″ x 18″ silk tapestry depicting Hanoi scene matted and held in a 25″ x 30″ gold frame. Rec'd—November 17, 2006. Est. Value—$350. Disposition—Archives Foreign.	His Excellency Nguyen Minh Triet President of the Socialist Republic of Vietnam and Madame Tran Thi Kim Chi.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 15″ x 23″ scene of wheat field with grazing bulls; matted in blue velvet and held in a 23″ x 30″ cherry wood frame. Rec'd—November 19, 2006. Est. Value—$450. Disposition—Archives Foreign.	Mr. Le Hoang Quan, Chairman Ho Chi Minh City People's Committee, Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing: Brown, green and gold collared shirt with a leaf pattern; held in a black box. Rec'd—November 20, 2006. Est. Value—$235. Disposition—Archives Foreign..	His Excellency Susilo Bambang Yudhoyono, President of the Republic of Indonesia and Mrs. Ani Bambang Yudhoyono.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Artwork: 25″ x 34″ canvas painting of Indonesian women dressed in elaborate outfits; held in a 5″ gold tone wooden frame. Rec'd—November 20, 2006. Est. Value—$550. Disposition—Archives Foreign.		
President	Artwork: 18″ sculpture made from laminated sheet glass with blue notches carved in the middle. Rec'd—November 28, 2006. Est. Value—$500. Disposition—Archives Foreign.	His Excellency Toomas Hendrik Ilves, President of the Republic of Estonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Weapon: 16″ two sided silver dagger with a gold tone case; held in a 22″ wooden box. Rec'd—December 6, 2006. Est. Value—$400. Disposition—Archives Foreign.	His Excellency Ilham Aliyev, President of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Household item: 14½″ x 9″ x 26½″ hand-carved wood Asante ceremonial stool with crescent-shape seat set over a flat base and complex support structure with geometric pattern. Rec'd—December 13, 2006. Est. Value—$2,200. Disposition—Archives Foreign.	His Excellency Boni Yayi, President of the Republic of Benin.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Craft: 102″ x 94″ white quilt with red and blue trim, an abstract floral design in the center, and on the corners and heart shaped designs on sides made of a red, brown, beige, blue and white in floral pattern; handmade by a women's quilting collective. Rec'd—January 14, 2006. Est. Value—$500. Disposition—Archives Foreign..	Her Excellency Ellen Johnson Sirleaf, President of the Republic of Liberia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Household: 61″ x 49″ navy woven wrapping cloth with teal stripes and a pink pattern embroidered with yellow and red accents and pink fringe. Rec'd—January 14, 2006. Est. Value—$200. Disposition—Archives Foreign.		
First Lady	Jewelry: Pendant and earring set including a ½″ orange freebranch coral cylinders pendant with intricate gold rope and filigree faceted detail and ½″ orange freebranch coral cylinder earrings with gold intricate filigree faceted detail. Rec'd—January 17, 2006. Est. Value—$350. Disposition—Archives Foreign..	His Excellency John Agyekum Kufuor, President of the Republic of Ghana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Accessories (3): 68″ x 46″ handwoven emerald green, fuchsia, indigo blue, orange and purple traditional Ghana Kente cloths with a stripe and geometric weft motif pattern. Rec'd—January 17, 2006. Est. Value—$57. Disposition—Archives Foreign..		
	Jewelry: 1″ 18kt gold pierced cross earrings. Rec'd—January 17, 2006. Est. Value—$125. Disposition—Archives Foreign.		

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Artwork: 14½″ x 7″ bronze court figure with elaborately decorated headdress, wearing three long bead necklaces and one large link chain necklace with three stones (or pods), a sheath wrapped under arms; face marked on cheeks and forehead with elongated triangular shapes inside of which are rows of "cuts"; mounted on a 5½″ x 7″ wooden base with a presentation plaque engraved "Presented by, The President, Federal Republic of Nigeria." Rec'd—January 17, 2006. Est. Value—$3,450. Disposition—Archives Foreign.	His Excellency Olusegun Obasanjo, President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Book, hardcover: "Legends of the Indus," by Annemarie Schimmet and Ali S. Asami. Rec'd—January 24, 2006. Est. Value—$80. Disposition—Archives Foreign. Miscellaneous (3): Lengths of assorted matching Hital silk: 105″ x 44″ steel blue silk with gold floral brocade; 101″ x 45″ sheer steel blue silk with gold floral brocade and 1″ trim along lengh and 10″ ornate trim along sides; and 101″ x 43″ solid steel blue silk. Rec'd—January 24, 2006. Est. Value—$224. Disposition—Archives Foreign.. Desk accessory: 7″ x 4″ x 1½″ silver box adorned with a gold-tone Pakistani coat of arms on top; lined with green felt. Rec'd—January 24, 2006. Est. Value—$500. Disposition—Archives Foreign.	Mrs. Rukhasana Aziz, c/o The Prime Minister of The Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Accessory: 44″ x 92″ off-white cashmere shawl with hand embroidered paisley medallion border. Rec'd—January 25, 2006. Est. Value—$620. Disposition—Archives Foreign.	His Excellency Shaukat Aziz, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Sculpture: Pure silver hollow male bust "The Creator;" opens at top of head with wagon wheels inside, mounted on a marble base; signed and dated 96 by Rafael Zamarripa. Rec'd—January 25, 2006. Est. Value—$1,500. Disposition—Archives Foreign. Book: Hardcover, "Rafael Zamarripa;" hand sewn book set into a hinged wood box, lid carved with abstract image of a face and "Zamarripa 98." Rec'd—January 25, 2006. Est. Value—$250. Disposition—Archives Foreign.	The Honorable Silverio Cavazos Ceballos, The Governor of the Mexican State of Colima and Mrs. Silverio Cavazos Ceballos.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	DVD: "Nogueras Children's Ludic Centre." Rec'd—January 25, 2006. Est. Value—$15. Disposition—Archives Foreign.		
	Artwork (limited edition 27/50): Yellow and brown etching on paper depicting people dining, a river landscape, a clock tower printed "Armeria" and "Fiestas de la Guadalupana", dated 04 Rec'd—January 25, 2006. Est. Value—$35. Disposition—Archives Foreign.		
First Lady	Accessory: 36″ x 36″ earth tones silk Hermes scarf "Sous Le Cedre" printed with a center design of a Cedar tree of Lebanon, shepherds and sheep with an intricate border. Rec'd—January 27, 2006. Est. Value—$320. Disposition—Archives Foreign.	His Excellency Saad R. Hariri, Lebanese Member of Parliament.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Books, hardcover (5): "Omaggio all' Italia," and "Omaggio al Mediterraneo," by Andrea Pistolesi; "Leonardo: L'Ultima Cena," by Electa; "Omaggio alle Alpi," by Marco Bianchi and "The Colosseum," by Aba Gabucci. Rec'd—February 9, 2006. Est. Value—$463. Disposition—Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	CD: "Meglio Una Canzone," by Mariano Apicella. Rec'd—February 9, 2006. Est. Value—$15. Disposition—Archives Foreign.		
	Book, softcover: *Quarant'anni Oscar Monadori 1995–2005*. Rec'd—February 9, 2006. Est. Value—$30. Disposition—Archives Foreign.		
	White porcelain pitcher with gold trim and matching round tray. Rec'd—February 9, 2006. Est. Value—$1,746. Disposition—Archives Foreign.		
	Accessories (2): E. Marinella silk scarves; Rec'd—February 9, 2006. Est. Value—$320. Disposition—Archives Foreign.		
First Lady	Jewelry: 1″ 18k white gold snowflake pendant engraved "Comune di Sestriere" with town crest; on a black silk cord. Rec'd—February 10, 2006. Est. Value—$250. Disposition—Archives Foreign.	The Honorable Andrea Colarelli, Mayor of Pinerolo Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Valenti & Company rosewood ballpoint and fountain pen set, engraved "Comune di Sestriere" Rec'd—February 10, 2006. Est. Value—$355. Disposition—Archives Foreign.		

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Book, hardcover: ''Renato Missaglia: Rencontres a Monte-Carlo 2005,'' by Osvaldo Patani Rec'd—February 10, 2006. Est. Value—$50. Disposition—Archives Foreign.		
	Book, hardcover: ''2004 New Europe'' by Renato Missaglia Rec'd—February 10, 2006. Est. Value—$40. Disposition—Archives Foreign.		
	Book, softcover: ''Renato Missaglia, Una Pittura Polidimensionale,'' by Luciano Caramel. Rec'd—February 10, 2006. Est. Value—$39. Disposition—Archives Foreign.		
First Lady	Photographs (2): 12″ x 8″ color photographs of Mrs. Laura Bush, His Excellency Silvio Berlusconi and Miss Barbara Bush on February 9, 2006 at the Villa Madama in Rome; each held in a 13″ x 9″ Bottega Dell'Argento silver frame with leaf detail at each corner. Rec'd—February 28, 2006. Est. Value—$958. Disposition—Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Miscellaneous (2): Lengths of cloth: 104″ x 42″ lavender silk with silver brocade; and 94″ x 44″ blush colored silk. Rec'd—March 4, 2006. Est. Value—$40. Disposition—Archives Foreign.	Mrs. Sehba Musharraf, First Lady of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Accessory: 76″ x 27″ Rush Ke Kashmik tan cashmere pashmina with 4″ trim. Rec'd—March 4, 2006. Est. Value—$140. Disposition—Archives Foreign.		
	Jewelry: Three piece set including: Pierced earrings with oval cut sapphire encircled by round cubic zirconium and set in gold with ½″ matching ring and 19″ pendant necklace. Rec'd—March 4, 2006. Est. Value—$500. Disposition—Archives Foreign.		
First Lady	Household items (2): Place settings; one set of yellow with embroidered brown design and one set of brown with embroidered ivory and brown design, both with decorative pucca shell fringe. Sets include six 15″ x 18″ cotton placemats, six 15″ x 15″ linen napkins, one 11½″ x 11½″ cotton hot pad, and one 19″ x 54″ cotton table runner. Rec'd—March 6, 2006. Est. Value—$325. Disposition—Archives Foreign.	His Excellency Mathieu Kerekou, President Republic of Benin.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Household item: 10″ x 13½″ hand-painted red and black wooden tray with design of assorted animals surrounded by 1″ floral border. Rec'd—March 14, 2006. Est. Value—$210. Disposition—Archives Foreign..	Mrs. Marta Sahagun de Fox, First Lady of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Jewelry: 7½″ sterling silver link bracelet with clasp. Rec'd—March 14, 2006. Est. Value—$150. Disposition—Archives Foreign.		
First Lady	Desk accessory: 5″ x 7½″ Steuben crystal paperweight with ripple pattern design and engraved, ''UNICEF, Humanitarian Award, Mrs. Laura Bush, March 8, 2006.'' Rec'd—March 16, 2006. Est. Value—$850. Disposition—Archives Foreign.	His Excellency Sheikh Salem Abdullah Al Jaber Al-Sabah, The Ambassador of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Desk accessory: 4″ x 6″ Jan Sevadjian green silk photo album with bow. Rec'd—March 16, 2006. Est. Value—$40. Disposition—Archives Foreign.		
First Lady	Book, hardcover: ''The Kite Runner,'' by Khaled Hosseini; inscribed by author. Rec'd—March 16, 2006. Est. Value—$25. Disposition—Archives Foreign.	His Excellency Said T. Jawad, Ambassador of Afghanistan and Mrs. Shamim Jawad.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Book, hardcover: ''Afghanistan Evolving,'' by Caroline Hudson Firestone; signed by author. Rec'd—March 16, 2006. Est. Value—$224. Disposition—Archives Foreign.		
	Accessory: 20½″ x 70″ hand beaded raw silk shawl with gold and black design. Rec'd—March 16, 2006. Est. Value—$60. Disposition—Archives Foreign.		
First Lady	Desk accessory: 11¾″ x 9½″ sterling silver picture frame with gold harp logo on top Rec'd—March 17, 2006. Est. Value—$300. Disposition—Archives Foreign.	His Excellency Bertie Ahern, T.D., Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household item: 6″ x 4½″ porcelain reproduction OWR Delfts decorative wall plate with the image of a winter windmill scene with a black, blue, yellow and green paisley border stamped with the OWR Delfts logo, ''Art 24–103'' and ''Westraven Anno 1661 Delfts Hanwek'' on the reverse. Rec'd—March 20, 2006. Est. Value—$177. Disposition—Archives Foreign.	His Excellency Jaap de Hoop Scheffer, Secretary General of the North Atlantic Treaty Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Household item: 6″ x 4½″ porcelain reproduction OWR Delfts decorative wall plate with the image of a summer lake scene with a black, blue, yellow and green paisley border stamped with the OWR Delfts logo, "Art 24–105" and "Westraven Anno 1661 Delfts Handwek" on the reverse. Rec'd—March 20, 2006. Est. Value—$177. Disposition—Archives Foreign.		
First Lady	Clothing: Traditional Liberian short sleeve blue polyester shirt dress with shoulder pads, two large front pockets and 7″ slit in back. Rec'd—March 21, 2006. Est. Value—$55. Disposition—Archives Foreign.	Her Excellency Ellen Johnson Sirleaf, President of the Republic of Liberia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Craft: 85″ x 88″ hand stitched blue quilt with 3″ yellow border and traditional Liberian peace doves in corners. Flanked by Liberian seal with embroidered images of the United States and Liberia centered on quilt and inscribed below with "To: First Lady Laura Bush in Commemoration of Your Visit to Liberia. From: Ellen Johnson Sirleaf, President of the Republic of Liberia." Rec'd—March 21, 2006. Est. Value—$450. Disposition—Archives Foreign.		
First Lady	Cloths (3): 42″ x 73″ handwoven emerald green, black, purple and gold traditional Ghana Kente cloth with checkered pattern. Rec'd—April 12, 2006. Est. Value—$406. Disposition—Archives Foreign.	His Excellency John Agyekum Kufuor, President of the Republic of Ghana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Jewelry: 18″ Millefiori and Swarovski crystal beaded necklace with 1″ circular gold pendant. Rec'd—April 12, 2006. Est. Value—$70. Disposition—Archives Foreign.		
First Lady	Household accessories: 70″ x 70″ white linen table cloth with embroidered white and yellow daisies and six 9″ x 9″ matching napkins. Rec'd—April 18, 2006. Est. Value—$367. Disposition—Archives Foreign.	Mrs. Hoda Siniora, c/o Office of the Prime Minister of the Republic of Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: 16½″ brass, silver, and copper-tone beaded coil necklace with copper clasp. Rec'd—April 20, 2006. Est. Value—$50. Disposition—Archives Foreign.	His Excellency Thaksin Shinawatra, Prime Minister of the Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Household items: 102″ x 69″ drawnwork opaque silk tablecloth with embroidered tan flowers and scalloped edges; accompanied by twelve matching 15″ square cotton napkins. Rec'd—April 20, 2006. Est. Value—$417. Disposition—Archives Foreign.	Madame Liu Yongqing, Office of the President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Collectable: 30″ Azerbaijan costumed woman dancing, poised with a tambourine and wearing a silk and lace dress decorated with beading and jewelry set with assorted colors of faux stones; encased in a 21″ x 20″ x 34″ plastic case. Rec'd—April 27, 2006. Est. Value—$350. Disposition—Archives Foreign.	Mrs. Mehriban Aliyeva, c/o Office of the President of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Household item: 8′5″ x 10′4″ Serapi wool rug with tan, peach, yellow and blue pattern. Rec'd—April 27, 2006. Est. Value—$4,000. Disposition—Archives Foreign.		
First Lady	Household item: 8″ Meissen blue and white serving plate raised on a 3½″ base; Meissen marks have been indentified as of contemporary origin. Rec'd—May 3, 2006. Est. Value—$200. Disposition—Archives Foreign.	Her Excellency Angela Merkel, Chancellor of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Accessory: 69″ x 35″ white silk scarf with images of pink orchids and green stems and leaves. Rec'd—June 1, 2006. Est. Value—$196. Disposition—Archives Foreign.	Mrs. Goh Chok Tong, c/o Senior Minister of the Office of The Prime Minister of the Republic of Singapore.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Household item: 7″ x 4″ x 3″ silver and pewter embossed box embellished with flower designs. Rec'd—June 1, 2006. Est. Value—$171. Disposition—Archives Foreign.		
First Lady	Accessory: 41″ x 17″ black loop alpaca capelet with cream tie. Rec'd—June 8, 2006. Est. Value—$300. Disposition—Archives Foreign.	Her Excellency Michelle Bachelet, President of the Republic of Chile.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Book, hardcover (in Spanish): "Donde van las cosas del sueno? (Where Do the Dreamed Things Go?)," by Marty Brito Paut; held in a 13″ wooden book sheath laser cut to display for artwork on book cover. Rec'd—June 8, 2006. Est. Value—$120. Disposition—Archives Foreign.		

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Household accessory: 5½″ x 7″ Augarten handpainted white porcelain ''Viennese Rose'' vase with fuchsia roses and green trim; Augarten marks and numbered 62/2h 5089 144 on bottom. Rec'd—June 20, 2006. Est. Value—$230. Disposition—Archives Foreign.	His Excellency Hubert Gorbach, Vice Chancellor of the Republic of Austria and Mrs. Margot Gorbach.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Book, hardcover: ''Herend Porcelain: The history of a Hungarian institution,'' by Gabriella Balla. Rec'd—June 22, 2006. Est. Value—$60. Disposition—Archives Foreign.	Mrs. Klara Dobrev, c/o Prime Minister of the Republic of Hungary.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Household item: 12-person Herend tea set hand-painted bird, floral, and insect Rothschild Bird pattern on white porcelain with scalloped edges trimmed in gold; set includes twelve 2″ x 3½″ cups and 5½″ saucers, one creamer, one 5½″ x 7″ tea pot and one 2¾″ x 4½″ sugar bowl; undersides marked in blue with each Herend Handpainted Hungary number. Rec'd—June 22, 2006. Est. Value—$2,465. Disposition—Archives Foreign.		
	Jewelry: 1″ x 1½″ Wladis silver dove whistle held on a 24″ silver chain. Rec'd—June 22, 2006. Est. Value—$457. Disposition—Archives Foreign.		
First Lady	Desk Accessory: Calligraphy set including paper, three ink sticks held in a wooden box, bottle of ink, mat, wet stone, ceramic ink pot, scroll weight, leather stick holder, 7″ x 12″ lacquer wood box and lid with carved design, an instruction booklet and softcover book. Rec'd—June 29, 2006. Est. Value—$447. Disposition—Archives Foreign.	His Excellency Junichiro Koizumi, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Jewelry: 1¼″ round ''Lamie'' gold-tone and cloisonne watch pendant, held on a white and gold rope chain with a ½″ x 1″ gold-tone and enamel oval charm decorated with flowers attached with a gold clasp. Rec'd—June 29, 2006. Est. Value—$30. Disposition—Archives Foreign.		
First Lady	Flowers: Bouquet of flowers. Rec'd—July 13, 2006. Est. Value—$70. Disposition—Handled pursuant to Secret Service policy.	The Honorable Harald Lastovka, Mayor of Stralsund, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Jewelry: Gold-tone German Hiddensee 1¾″ x 2″ cross pendant held on a 18″ gold-tone chain. Rec'd—July 13, 2006. Est. Value—$62. Disposition—Archives Foreign.		
First Lady	Household item: 6″ x 13½″ hand-embroidered silk landscape featuring mountains, trees, deer, turtles, birds, flowers, clouds, and the sun; signed (embroidered) by artist Kim Young Ja; matted and held in a 13″ x 20″ dark brown wooden frame. Rec'd—September 14, 2006. Est. Value—$500. Disposition—Archives Foreign.	Mrs. Kwon Yang-suk, First Lady of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: 8″ x 8″ x 11″ red clay sculpture, "Musical Trio," of three children from Ghana playing instruments, by Mohamed Amin. (Damaged upon arrival.) Rec'd—September 18, 2006. Est. Value—$392. Disposition—Archives Foreign.	His Excellency John Agyekum Kufuor, The President of the Republic of Ghana and Mrs. Theresa Kufuor.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household item: 6″ x 4″ x 4½″ intricately designed, sterling silver, hinged jewelry box. Rec'd—September 18, 2006. Est. Value—$400. Disposition—Archives Foreign.	Mrs. Lyudmila Aleksandrovna Putina, c/o Office of the President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household items (set of 16): Organza table linens, intricately hand-embroidered and beaded with faux pearls, silver-tone beads and rope, and red metallic coil into a floral, checkered pattern. Set includes one 36″ x 38″ piece, one 16″ x 32″ piece, two 15½″ x 15½″ pieces, and twelve 9″ x 10″ pieces. Rec'd—October 2, 2006. Est. Value—$1,030. Disposition—Archives Foreign.	Mrs. Emine Erdogan, Office of the Prime Minister of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Books, hardcover (5): "Marrakech et la Mamounia," by Alan Gerard, "Arabesques: Decorative Art in Morocco," by Jean-Marc Castera, "Moroccan Textile Embroidery," by Isabelle Denamur, "Made in Morocco: A Journey of Exotic Tastes and Places," by Julie Le Clerc and John Bougen, "Arts and Crafts of Morocco," by James Jereb. Rec'd—November 7, 2006. Est. Value—$358. Disposition—Archives Foreign.	His Majesty Mohammed VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Book, hardcover: "Square One: A Potter's Journey," by Iskandar Jalil. Rec'd—November 16, 2006. Est. Value—$129. Disposition—Archives Foreign.	His Excellency Lee Hsien Loong, Prime Minister and Minister for Finance of the Republic of Singapore and Mrs. Ho Ching.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Household item: 3″ x 19″ multicolored pottery vase. Rec'd—November 16, 2006. Est. Value—$300. Disposition—Archives Foreign.		
First Lady	Accessory: 22″ x 70″ red and black reversible silk scarf embroidered in white with images of a house and a flower. Rec'd—November 17, 2006. Est. Value—$50. Disposition—Archives Foreign.	Mr. Le Sy Vuong Ha, Chief of Protocol, Ministry of Foreign Affairs of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Consumable: Miss Saigon perfume. Rec'd—November 17, 2006. Est. Value—$12. Disposition—Handled pursuant to Secret Service policy.		
	Jewelry: 16″ hemp necklace with a jade and gold-tone Lotus flower pendant. Rec'd—November 17, 2006. Est. Value—$82. Disposition—Archives Foreign.		
First Lady	Household item: 2½″ x 7½″ brown, oval-shaped lacquer box inlaid with iridescent pearl floral designs. Rec'd—November 17, 2006. Est. Value—$1,000. Disposition—Archives Foreign.	His Excellency Nguyen Minh Triet, President of the Socialist Republic of Vietnam and Madame Tran Thi Kim Chi.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household items: Gold, blue and white tea set with 4 cups/saucers, 4 dessert plates, a cream and sugar set and a teapot. Rec'd—November 19, 2006. Est. Value—$550. Disposition—Archives Foreign.	Mr. Le Hoang Quan, Chairman, Ho Chi Minh City People's Committee, Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing: Silk and polyester Asian-style jacket with black and beige floral patterns; includes matching scarf; in a black lacquer box. Rec'd—November 20, 2006. Est. Value—$405. Disposition—Archives Foreign.	Mrs. Ani Bambang Yudhoyono, Office of the President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Accessory: Black silk scarf hand-embroidered with a gold-tone and multi-colored floral pattern Rec'd—November 20, 2006. Est. Value—$425. Disposition—Archives Foreign.		
	Accessories (5): Brown purse, red purse, blue/white scarf, maroon scarf, and light blue scarf. Rec'd—November 20, 2006. Est. Value—$196. Disposition—Archives Foreign.		
	Ds (5): "Literacy Eradication Program in Indonesia," by Ministry of National Education (2), "Thematic Community Services on Illiteracy," by University of Gajah Mada Students (2), "Mobil Pintar," by Solidaritas IKIB. Rec'd—November 20, 2006. Est. Value—$75. Disposition—Archives Foreign.		

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Jewelry (2): Sterling silver vermeil cuff bracelets decorated with ornate cut-out designs. Rec'd—December 7, 2006. Est. Value—$180. Disposition—Archives Foreign. Household item: Gold, red, and green sheri-silk handmade rug. Rec'd—December 7, 2006. Est. Value—$2,400. Disposition—Archives Foreign. Jewelry: Set of silver jewelry with intricate designs and inlaid with turquois stones; includes belt, bracelet, earrings, and ring. Rec'd—December 7, 2006. Est. Value—$850. Disposition—Archives Foreign. Books, hardcover (set of 2): "Heydar Aliyev Foundation," published by the Heydar Aliyev Foundation. Rec'd—December 7, 2006. Est. Value—$80. Disposition—Archives Foreign. Accessory: Gold silk oblong scarf. Rec'd—December 7, 2006. Est. Value—$69. Disposition—Archives Foreign.	Mrs. Mehriban Aliyeva, c/o Office of the President of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household item: 5″ x 7″ hand painted enamel over metal Jay Strongwater photograph frame decorated with hand-set Swarovski crystals, faux pearls, and gold-tone trim. Rec'd—December 14, 2006. Est. Value—$995. Disposition—Archives Foreign.	Mrs. Rima Al-Sabah, Embassy of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Consumables (3): Package of Bosnia mljevena kafa tea, package of sugar cubes and a package of bosanski lokum biscuits. Rec'd—January 30, 2006. Est. Value—$10. Disposition—Handled pursuant to Secret Service policy. Household item: 19″ x 12½″ wood decorative tray featuring grapes and vine; finished with a glazed surface and surrounded by a carved floral border with two handles; printed "Rukotvorine Konjig Bosna Herceovina" on reverse. Rec'd—January 30, 2006. Est. Value—$175. Disposition—Archives Foreign. Silver-plated copper hammered Tea Set: Ornate plate with the image of a village and "Sarajevo", tea cup with ceramic interior, a hammered sugar dish with ceramic interior and a 1½″ lid with a star and moon finial and a tea pot. Rec'd—January 30, 2006. Est. Value—$150. Disposition—Archives Foreign.	Her Excellency Bisera Turkovic, Ambassador of Bosnia and Herzegovina Embassy of Bosnia and Herzegovina.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Family	Household item: 9½″ x 9½″ Rosenthal frosted purple glass square plate bearing the image of a Black Iris, Jordan's national flower, etched with the Royal cypher on the top and ''The Hashemite Kingdom of Jordan, 2005–2006'' on the bottom. Rec'd—December 30, 2005. Processed—January 3, 2006. Est. Value—$96 Disposition—Archives Foreign. Miscellaneous (4): Lucite boxes with wooden lids, inlaid mother of pearl in a square box with a lucite lid and wood border with stenciled wood base and a frosted geometric design border. Rec'd—December 30, 2005. Processed—January 3, 2006. Est. Value—$200. Disposition—Archives Foreign. Framed Artwork: Original abstract painting on wood of a street scene by Jordanian artist Hassan Jallal; signed by artist. Rec'd—December 30, 2005. Processed—January 3, 2006. Est. Value—$400 Disposition—Archives Foreign.	Their Majesties King Abdullah, II and Queen Rania al Abdullah of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Desk accessory: 9″ x 11″ black leather album holding 9½″ x 7″ photographs (23) documenting President and Mrs. Bush's official visit to Budapest, Hungary on June 21–22, 2006, with title page inside album cover, embossed with the Hungarian Coat of Arms; held in matching black leather slip case. Rec'd—June 22, 2006. Est. Value—$622. Disposition—Archives Foreign.	His Excellency Ferenc Gyurcsany, Prime Minister of the Republic of Hungary. His Excellency Laszlo Solyom, President of the Republic of Hungary.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Household items (7): Meissen porcelain handpainted Blue Onion pattern 7″ water pitcher with handle and 3″ cups (6). Rec'd—July 12, 2006. Est. Value—$686. Disposition—Archives Foreign.	Her Excellency Angela Merkel, Chancellor of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Household accessory: 10″ handblown GLAS hagen HUTTE turmalin glass vase with black specks and clear edge; laser etched with artist's name on bottom ''KAUFM 99.'' Rec'd—July 12, 2006. Est. Value—$500. Disposition—Archives Foreign.	The Honorable Harald Ringstorff, Minister-President of Mecklenburg-West Pomerania.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Family	Artwork: 25″ x 43″ oil on canvas painting entitled (in German), ''View of the Hanseatic City Stralsund,'' featuring a landscape view of Stralsund, Germany as seen from the water, by Frank Muller; held in 31″ x 48″ gold-tone baroque frame. Rec'd—July 13, 2006. Est. Value—$1,500. Disposition—Archives Foreign.	The Honorable Harald Lastovka, Mayor of Stralsund, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Household item: 13″ off-white round ''rose of Sharon Buncheong'' pottery dish, featuring intricately hand-painted pale pink mugunghwas (the Korean national flower), engraved in gold ''The President of the Republic of Korea and Mrs. Roh Moo-hyun'' with a male and female phoenix facing each other with a rose of Sharon between on the front and ''The President of the Republic of Korea and Mrs. Roh Moo-hyun'' on the back; signed by artist. Rec'd—September 14, 2006. Est. Value—$240. Disposition—Archives Foreign.. Household item: ''The Celadon'' tea set. Rec'd—September 14, 2006. Est. Value—$128. Disposition—Archives Foreign.	His Excellency Roh Moo-hyun, President of the Republic of Korea and Mrs. Kwon Yang-suk.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Household items (12): Five 2″ x 2¼″ silver coffee cups and three 2″ x 4″ wooden bowls, with both the cups and bowls featuring gold-tone Arabic Calligraphy symbols of Happiness, Love, Health, Well-Being and Blessings; three 3¼″ x 3½″ metal coffee jars covered in fabric and with accompanying wooden lids and 9½″ x 9½″ Rosenthal frosted green glass square plate laser-etched with the Royal cypher on top and ''The Hashemite Kingdom of Jordan, 2006–2007,'' on bottom, with both the jars and frosted plate bearing the image of an olive branch. Rec'd—December 19, 2006. Est. Value—$499. Disposition—Archives Foreign.	Their Majesties King Abdullah, II and Queen Rania al Abdullah of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Miscellaneous: 5″ x 1¾″ sterling silver box with green velvet lining and a ¾″ x ½″ plaque of Pakistan flag on top. Rec'd—January 24, 2006. Est. Value—$500. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Shaukat Aziz, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Household item: 4′3″ x 6′6″ finely woven Turkoman cotton contemporary carpet featuring geometric designs in burgundy, rust and black on an ivory field. Rec'd—March 1, 2006. Est. Value—$800. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Hamid Karzai, Chairman of the Interim Authority of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Andrew H. Card, Jr., Assistant to the President and Chief of Staff.	Household item: 3¾″ x 4½″ engraved sterling silver vase. Rec'd—March 2, 2006. Est. Value—$550. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency A.P.J. Abdul Kalam, President of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Artwork (2): 4½″ x 5½″ solid silver photo frame, engraved with a floral design on borders. Rec'd—March 2, 2006. Est. Value—$500. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency A.P.J. Abdul Kalam, President of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Scott McClellan, Assistant to the President and Press Secretary.	Household item: 73½″ x 49″ persian design Pakistan woven rug with center medallion and ivory field; overall design incorporates shades of blue, green, rust, brown, red and gold. Rec'd—March 4, 2006. Est. Value—$875. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brett Kavanaugh, Assistant to the President and Staff Secretary.	Household item: 76″ x 49″ persian design Pakistan woven rug with ivory background and center medallion on navy background; overall design incorporates shades of navy, peach, burgundy, light brown, and green. Rec'd—March 4, 2006. Est. Value—$875. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Anita B. McBride, Assistant to the President and Chief of Staff to the First Lady.	Household item: 62″ x 36″ persian design Pakistan woven rug with rust red background and center round medallion on rust red background; overall design incorporates shades of navy, light blue, green, pink, light brown, yellow and ivory. Rec'd—March 4, 2006. Est. Value—$600. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Rear Admiral Mark I. Fox, Deputy Assistant to the President and Director, White House Military Office.	Household item: 62″ x 38″ persian design Pakistan woven rug with light brown background and center square medallion surrounded by block figures; overall design incorporates shades of navy, light blue, pink, green, white and brown. Rec'd—March 4, 2006. Est. Value—$600. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
John Meyers, Special Assistant to the President and Deputy Director of Advance.	Household item: 73″ x 50″ persian design Pakistan woven rug with red rust background and center diamond medallion; overall design incorporates shades of navy, ivory, light brown, pink, light blue, and peach. Rec'd—March 4, 2006. Est. Value—$1,000. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Joseph W. Hagin, Assistant to the President and Deputy Chief of Staff.	Household item: 74″ x 48″ persian design Pakistan woven rug with dark blue background and center round medallion; overall design incorporates shades of ivory, light brown, dark blue, rust red and light blue. Rec'd—March 4, 2006. Est. Value—$1,000. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Elisabeth Millard, Special Assistant to the President and Senior Director.	Household item: 63″ x 38″ persian design Pakistan woven rug with ivory background and center medallion; overall design incorporates shades of pink, dusty mauve, light blue, green, brown, navy and peach. Rec'd—March 4, 2006. Est. Value—$500. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Daniel J. Bartlett, Counselor to the President.	Household item: 76″ x 49″ Persian design Pakistan woven rug with ivory background and center medallion on navy background; overall design incorporates shades of navy, peach, burgundy, light brown, and green. Rec'd—March 4, 2006.Est. Value—$875.Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Medallion: Brass ceremonial medal with gold plate inscribed with "Presented by Field Marshal, HUSSEIN TANTAWI, CINC of the Armed Forces, Minister of Defense and Military Production, Egypt." Rec'd—March 14, 2006. Est. Value—$50. Disposition—Pending Transfer to General Services Administration, Government Property. Household item: 17¾″ finely etched two piece (hurricane style) pure silver lamp. Rec'd—March 14, 2006. Est. Value—$1,000. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Field Marshall Mohamed Hussein Tantawi, Minister of Defense and Military Production of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Andrew H. Card, Jr., Assistant to the President and Chief of Staff.	Household item: 49″ x 76½″ persian design Pakistan rug with center medallion on a beige field; overall design incorporates shades of green, yellow, blue, burgundy and black. Rec'd—March 15, 2006. Est. Value—$745. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Andrew H. Card, Jr., Assistant to the President and Chief of Staff.	Accessories (6): Variety of E. Marinella silk twill ties with geometric patterns in various colors; red with light blue and white flowers, navy with white accents, red with green and blue accents, royal blue with red and blue accents, navy blue with yellow accents, and navy with light blue accents. Rec'd—March 24, 2006. Est. Value—$990. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Household item: 76″ x 49″ persian design Pakistan woven rug with ivory background and center oval medallion on rust red background; overall design incorporates shades of turquoise, pale yellow, peach, light brown, black and white. Rec'd—March 27, 2006. Est. Value—$1,000. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Pervez Musharraf President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Desk accessories (2): William and Son sterling silver roller ball and fountain pen set. Rec'd—April 3, 2006. Est. Value—$1,250. Disposition—Pending Transfer to General Services Administration, Government Property.	His Highness Sheikh Salman Bin Hamad Bin Isa Al-Khalifa Crown Prince of the Kingdom of Bahrain and Head of the Bahrain Defence Force.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Desk accessory: Silver tray engraved with Frank-Walter Steinmeier and German emblem. Rec'd—April 3, 2006. Est. Value—$400. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Frank-Walter Steinmeier, Minister of Foreign Affairs of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Collectable: Wooden miniature ornate ship steering wheel with collection certificate. Rec'd—April 24, 2006. Est. Value—$1,250. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Hu Jintao, President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Household item: 66″ x 44″ fine Afghan rug with center geometric design on a gold field; overall design incorporates shades of pink, rose, burgundy, green, blue, taupe, brown and black. Rec'd—April 26, 2006. Est. Value—$1,200. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Abdullah Abdullah, Minister of Foreign Affairs of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Michele L. Malvesti, Senior Director for Combating Terrorism Strategy.	Jewelry: Faconnable lady's watch with brilliant accents and two alternate wristbands; held in a leather jewelry box. Rec'd—June 20, 2006. Est. Value—$1,950. Disposition—Pending Transfer to General Services Administration, Government Property.	His Royal Highness Abdallah Bin Abd Al-Aziz Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard, Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Desk accessory: Blue Omas triangular fountain pen with brass accents. Rec'd—June 20, 2006. Est. Value—$495. Disposition—Pending Transfer to General Services Administration, Government Property.	The Honorable Massimo D' Alema, Deputy Prime Minister and Minister of Foreign Affairs of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Household item: 66″ x 44″ fine Afghan rug with repeating geometric designs on a gold field; overall design incorporates shades of navy, red, green, peach and white. Rec'd—July 13, 2006. Est. Value—$1,200. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Rangin Dadfar Spanta, Minister of Foreign Affairs of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Joseph W. Hagin, Assistant to the President and Deputy Chief of Staff.	Artwork: 10″ x 9″ x 3″ statue consisting of a pink granite base adorned with gold trim, a gold palm tree in the center and flanked on either side by two crystal horse heads. Rec'd—September 5, 2006. Est. Value—$1,500. Disposition—Pending Transfer to General Services Administration, Government Property.	His Royal Highness Abdallah Bin Abd Al-Aziz Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard, Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PRESIDENT OF THE U.S. AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Artwork: 8″ x 12″ replica of traditional Phinisi ship delicately constructed with silver wire twisted in intricate patterns on the sails and body of boat. Rec'd—September 26, 2006. Est. Value—$500. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Muhammad Jusuf Kalla, Vice President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Michael S. Doran, Senior Director for Near East and North African Affairs.	Accessory: Tiffany men's watch with self-winding, mechanical movement, eighteen karat gold face, farmed black alligator strap, chronometer, hour, minute and second hands and date window; presented in a black leather box. Rec'd—October 10, 2006. Est. Value—$4,050. Disposition—Pending Transfer to General Services Administration, Government Property.	His Royal Highness Abdallah Bin Abd Al-Aziz Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Household item: 36″ x 62″ finely woven Afghan rug featuring floral pattern in black, muted gold and sage green. Rec'd—October 11, 2006. Est. Value—$800. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Hamid Karzai, Chairman of the Interim Authority of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Household item: 11″ x 4″ lapis vase with inlaid semi-precious stones. Rec'd—November 1, 2006. Est. Value—$850. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Zalmai Rassoul, National Security Advisor of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Household item: 4′ x 6′ wool Afghan rug with diamond pattern in burnt orange, navy blue, marigold, cream and green. Rec'd—November 14, 2006. Est. Value—$1,000. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Abdul Rahim Wardak, Minister of Defense of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Household item: 78″ x 60″ finely wovan wool Afghani rug with 3″ fringe; geometric style design in burgundy, navy, and salmon with mint green accents. Rec'd—November 28, 2006. Est. Value—$1,100. Disposition—Pending Transfer to General Services Administration, Government Property.	His Excellency Hamid Karzai, Chairman of the Interim Authority of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE VICE PRESIDENT

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice President	Fur-lined cashmere Arabic coat, Rec'd—January 16, 2006. Est. Value—$400. Disposition—Archives Foreign. Gold vermeil sculpture depicting an oasis. Rec'd—January 16, 2006. Est. Value—$2000. Disposition—Archives Foreign. Arabian truffles and assorted cookies and candies. Rec'd—January 16, 2006. Est. Value—$2436. Disposition—Handled pursuant to Secret Service policy. Silver serving pieces for above food gifts. Rec'd—January 16, 2006. Est. Value—$909. Disposition—Archives Foreign, Three Herfy leather-bound appointment books and desk calendars. Rec'd—January 16, 2006. Est. Value—$222. Disposition—Archives Foreign. Silver diorama of a desert scene. Rec'd—January 16, 2006. Est. Value—$3500. Disposition—Archives Foreign.	His Majesty Abdallah Bin Abd al-Aziz, Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Cheney	Mellerio & Mellor ladies' watch. Rec'd—January 16, 2006. Est. Value—$2500. Disposition—Archives. 18 karat white gold and diamond ring and earrings set. Rec'd—January 16, 2006. Est. Value—$1850. Disposition—Archives Foreign.	His Majesty Abdallah Bin Abd al-Aziz, Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Silver box decorated with Pakistani flag. Rec'd—January 24, 2006. Est. Value—$450. Disposition—Archives Foreign.	His Majestym Shaukat Aziz, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Silver knife and sheath. Rec'd—February 7, 2006. Est. Value—$500. Disposition—Archives Foreign.	His Majesty King Abdullah II bin al Hussein of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Six E. Marinella neckties. Rec'd—March 1, 2006. Est. Value—$810. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Sterling silver coffee and tea serving set. Rec'd—March 7, 2006. Est. Value—$3000. Disposition—Archives Foreign.	Field Marshal Hussein Tantawi, Commander-in-Chief of the Egyptian Armed Forces & Minister of Defense and Military Production.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Cheney	18 karat gold bracelet with engraved hieroglyphic designs. Rec'd—March 7, 2006. Est. Value—$750. Disposition—Archives Foreign.	Field Marshal Hussein Tantawi, Commander-in-Chief of the Egyptian Armed Forces & Minister of Defense and Military Production.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President and Mrs. Cheney	Floral porcelain plate. Rec'd—April 20, 2006. Est. Value—$75. Disposition—Archives Foreign. Two books of postage stamps. Rec'd—April 20, 2006. Est. Value—$40. Disposition—Archives Foreign. Fabric and paper scroll painting. Rec'd—April 20, 2006. Est. Value—$200. Disposition—Archives Foreign.	His Excellency Hu Jintao, President of the Peoples Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE VICE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice President	Wool carpet in the Kuba design. Rec'd—April 28, 2006. Est. Value—$6900. Disposition—Archives Foreign.	His Excellency Ilham Aliyev, President of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Breguet men's watch. Rec'd—May 5, 2006. Est. Value—$25300. Disposition—Archives Foreign.	His Excellency Nursultan Nazarbayev President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President and Mrs. Cheney	Sterling silver, gold vermeil, and stone incense burner. Rec'd—May 5, 2006. Est. Value—$2000. Disposition—Archives Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Cheney	Brass mirror decorated with cubic zirconia. Rec'd—May 5, 2006. Est. Value—$50. Disposition—Archives Foreign. Two small stone and metal boxes with cubic zirconia insets. Rec'd—May 5, 2006. Est. Value—$500. Disposition—Archives Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Custom-made western saddle. Rec'd—May 27, 2006. Est. Value—$6500. Disposition—Archives Foreign. Italian crib linens by Martini. Rec'd—May 27, 2006. Est. Value—$1891. Disposition—Archives Foreign. Jordanian gold baby coin. Rec'd—May 27, 2006. Est. Value—$350. Disposition—Transferred to General Services Administration. Gucci baby carrier and teddy bear. Rec'd—May 27, 2006. Est. Value—$920. Disposition—Archives Foreign. Tiffany baby rattle. Rec'd—May 27, 2006. Est. Value—$223. Disposition—Archives Foreign. Small Links silver box. Rec'd—May 27, 2006. Est. Value—$140. Disposition—Archives Foreign. Two Links silver-plated baby frames. Rec'd—May 27, 2006. Est. Value—$110. Disposition—Transferred to General Services Administration.	His Majesty King Abdullah II bin al Hussein of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Ten silver medals commemorating Lithuanian towns. Rec'd—May 31, 2006. Est. Value—$300. Disposition—Archives Foreign.	His Excellency Valdas Adamkus, President of the Republic of Lithuania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Cheney	Sterling silver box decorated with carved amber stone. Rec'd—May 31, 2006. Est. Value—$450. Disposition—Archives Foreign.	His Excellency Valdas Adamkus, President of the Republic of Lithuania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Silver filigree dish. Rec'd—June 2, 2006. Est. Value—$350. Disposition—Archives Foreign.	His Excellency Sali Berisha, Prime Minister of Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Mallard drake bronze sculpture. Rec'd—June 29, 2006. Est. Value—$310. Disposition—Archives Foreign.	The Honourable Noel A. Kinsella, Ph.D., S.T.D., Speaker of the Canadian Senate.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE VICE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice President	Framed copper painting of St. George. Rec'd—July 10, 2006. Est. Value—$350. Disposition—Archives Foreign.	His Excellency Mikheil Saakashvili, President of Georgia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Silver palm tree sculpture in glass case. Rec'd—September 6, 2006. Est. Value—$1500. Disposition—Archives Foreign.	His Excellency Tariq al-Hashemi, Vice President of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Silver and amber letter box. Rec'd—September 20, 2006. Est. Value—$375. Disposition—Archives Foreign.	His Excellency Kazimierz Marcinkiewicz, Prime Minister of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Sterling silver box with decorative engraving. Rec'd—September 28, 2006. Est. Value—$750. Disposition—Archives Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Silver phinisi (sailboat) sculpture. Rec'd—October 4, 2006. Est. Value—$550. Disposition—Archives Foreign.	His Excellency Muhammad Jusuf Kalla, Vice President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Red wool, cotton and silk rug of Afghan origin. Rec'd—October 19, 2006. Est. Value—$950. Disposition—Archives Foreign.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Gold vermeil ibex sculpture on marble base. Rec'd—October 31, 2006. Est. Value—$1000. Disposition—Archives Foreign.	His Royal Highness Prince Khalid bin Sultan, Assistant Minister of Defense and Aviation of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Light brown cotton and wool rug of Afghan origin. Rec'd—November 16, 2006. Est. Value—$575. Disposition—Archives Foreign. Brass and lapis lazuli vase. Rec'd—November 16, 2006. Est. Value—$275. Disposition—Archives Foreign.	General Abdul Rahim Wardak, Minister of Defense Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Gold vermeil sword with diamond-studded hilt. Rec'd—November 27, 2006. Est. Value—$5000. Disposition—Archives Foreign. 18 karat white gold ruby and diamond jewelry set (Vice President accepted on behalf of his daughter, Elizabeth Cheney). Rec'd—November 27, 2006. Est. Value—$55000. Disposition—Archives Foreign.	His Majesty Abdallah Bin Abd al-Aziz, Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Cheney	18 karat white gold sapphire and diamond jewelry set. Rec'd—November 27, 2006. Est. Value—$45000. Disposition—Archives Foreign.	His Majesty Abdallah Bin Abd al-Aziz, Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Set of three Aurora fountain pens with 18 karat gold nibs. Rec'd—December 22, 2006. Est. Value—$1485. Disposition—Archives Foreign.	His Excellency Francesco Rutelli, Deputy Prime Minister of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE VICE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice President and Mrs. Cheney	Original abstract painting by Jordanian artist Hassan Jallal. Rec'd—January 4, 2006. Est. Value—$500. Disposition—Archives Foreign. Four small acrylic boxes with wood and mother-of-pearl inlaid lids. Rec'd—January 4, 2006. Est. Value—$200. Disposition—Archives Foreign. Handpainted floral glass plate. Rec'd—January 4, 2006. Est. Value—$75. Disposition—Archives Foreign.	His Majesty King Abdullah II bin al Hussein of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President and Mrs. Cheney	Large blue blown glass vase. Rec'd—May 4, 2006. Est. Value—$300. Disposition—Archives Foreign. Hardcover coffee table book: *Ukrainian Antiquities*. Rec'd—May 4, 2006. Est. Value—$65. Disposition—Archives Foreign.	His Excellency Viktor Yushchenko, President of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President and Mrs. Cheney	Large contemporary painting by Croatian artist, Munir Vejzovic. Rec'd—May 7, 2006. Est. Value—$3500. Disposition—Archives Foreign. Hardcover coffee table book, *Munir Vejzovic*. Rec'd—May 7, 2006. Est. Value—$65. Disposition—Archives Foreign.	His Excellency Ivo Sanader, Prime Minister of the Republic of Croatia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President and Mrs. Cheney	Green leather album with photographs. Rec'd—May 17, 2006. Est. Value—$180. Disposition—Archives Foreign. Two bottles of Fawah perfume. Rec'd—May 17, 2006. Est. Value—$108. Disposition—Handled pursuant to Secret Service policy. Silver cufflinks and necklace with the Saudi crest. Rec'd—May 17, 2006. Est. Value—$125. Disposition—Archives Foreign.	His Royal Highness Prince Turki Al-Faisal, Embassy of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President and Mrs. Cheney	White cotton tablecloth with cutwork embroidery. Rec'd—October 5, 2006. Est. Value—$30. Disposition—Archives Foreign. Black shantung silk fabric with machine embroidery, jet beads, and sequins. Rec'd—October 5, 2006. Est. Value—$200. Disposition—Archives Foreign. Ruby bracelet on sterling silver backing. Rec'd—October 5, 2006. Est. Value—$200. Disposition—Archives Foreign.	Her Excellency Begum Sehba Musharraf, First Lady of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President and Mrs. Cheney	Coffee set including cups, bowls, canisters, and glass tray. Rec'd—December 29, 2006. Est. Value—$375. Disposition—Archives Foreign.	His Majesty King Abdullah II bin al Hussein of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President's Staff David Addington, Assistant to the President and Chief of Staff to the Vice President.	Hermes white and yellow gold watch. Rec'd—January 16, 2006. Est. Value—$3625. Disposition—General Services Administration.	His Majesty Abdallah Bin Abd al-Aziz, Al Saud Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE VICE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice President's Staff Charles Durkin, Personal Aide to the Vice President.	Hermes white gold watch. Rec'd—January 16, 2006. Est. Value—$1360. Disposition—General Services Administration.	His Majesty Abdallah Bin Abd al-Aziz, Al Saud Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President's Staff John Hannah, Assistant to the Vice President for National Security Affairs.	Hermes white and yellow gold watch. Rec'd—January 16, 2006. Est. Value—$3625. Disposition—General Services Administration.	His Majesty Abdallah Bin Abd al-Aziz, Al Saud Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President's Staff Lea Anne McBride, Assistant to the Vice President for Communications.	Hermes white and yellow gold watch. Rec'd—January 16, 2006. Est. Value—$3625. Disposition—General Services Administration.	His Majesty Abdallah Bin Abd al-Aziz, Al Saud Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President's Staff Troy McNichols, Assistant to the Vice President and Director of Advance.	Hermes white and yellow gold watch. Rec'd—January 16, 2006. Est. Value—$3625. Disposition—General Services Administration.	His Majesty Abdallah Bin Abd al-Aziz, Al Saud Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President's Staff Derrick Morgan, Assistant to the Vice President for Special Projects and Staff Secretary.	Eterna watch with stainless steel band. Rec'd—January 16, 2006. Est. Value—$2170. Disposition—General Services Administration.	His Majesty Abdallah Bin Abd al-Aziz, Al Saud Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President's Staff Samantha Ravich, Deputy Assistant to the Vice President for National Security Affairs.	Shearling-lined Arabic wool coat. Rec'd—January 16, 2006. Est. Value—$600. Disposition—General Services Administration. Black leather artist's portfolio. Rec'd—January 16, 2006. Est. Value—$121. Disposition—General Services Administration. Chanel watch with diamonds. Rec'd—January 16, 2006. Est. Value—$3900. Disposition—General Services Administration.	His Majesty Abdallah Bin Abd al-Aziz, Al Saud Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President's Staff Samantha Ravich, Deputy Assistant to the Vice President for National Security Affairs.	Red wool and cotton rug of Afghan origin. Rec'd—November 16, 2006. Est. Value—$400. Disposition—General Services Administration.	General Abdul Rahim Wardak Minister of Defense Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Condoleezza Rice, Secretary of State.	Large Painting of Junkanoo Band and dancers, Painted by the U.S. Ambassador's Body Guard, Clifford Pernander. Rec'd—March 23, 2006. Est. Value—$550. Location—Official Use for the Department of State Museum.	The Right Honorable Perry G. Christie, M.P., Prime Minister of the Commonwealth of The Bahamas.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Condoleezza Rice, Secretary of State.	White Gold and Diamond Necklace, Earrings, Bracelet, and Ring. Rec'd—February 6, 2006. Est. Value—$20,000. Disposition—Transferred to General Services Administration.	Abdallah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Black Silk Handbag by Hager Design and Silk Shawl by Hager Design. Rec'd—July 27, 2006. Est. Value—$330. Disposition—Transferred to General Services Administration.	His Excellency Mr. Peter John Michelson, Ambassador Extraordinary and Plenipotentiary of the Kingdom of Cambodia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Decorative Orb on stand (Crystal Ball) hand painted with a picture of The Secretary of State inside. Rec'd—July 18, 2006. Est. Value—$800. Location—Official Use for the Department of State Museum.	Chinese General Guo, Ranking Vice Chairman—Central Military Commission, China.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Book: *Moscow; Photographs by Nikolan Rakhmanov* and framed print: Spasskaya Tower, 19th century. Received—June 29, 2006. Est. Value—$500. Location—Official Use in Secretary Rice's Office.	His Excellency Sergey Lavrov, Minister of Foreign Affairs of the Russian Federation.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Table Runner of Idrija Bobbin Lace. Rec'd—July 11, 2006. Est. Value—$380. Location—Official Use for the Department of State Museum.	His Excellency Janez Jansa, Prime Minister of the Republic of Slovenia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Silver Bowl. Rec'd—March 6, 2006. Est. Value—$420. Location—Official Use in the Office of the Chief of Protocol.	Field Marshall Hussein Tantawi. Commander in the Chief of the Egyptian Armed Forces and Minister of Defense of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Medium sized rust colored rug with tan fringe. Rec'd—April 5, 2006. Est. Value—$400. Location—Official Use in the Office of the Chief of Protocol.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Two Silk Scarves. Rec'd—February 23, 2006. Est. Value—$400. Location—Official Use in the Department of State Museum.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Gold Pin and Hermes Scarf. Rec'd—March 23, 2006. Est. Value—$500. Location—Official Use in the Department of State Museum.	Her Excellency Dora Bakoyannis, Minister of Foreign Affairs of the Hellenic Republic.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Hermes Scarf; oversized. Rec'd—January 26, 2006. Est. Value—$400. Disposition—Transferred to General Services Administration.	His Excellency Saad Hariri, Member of Parliament, Republic of Lebanon.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Personalized Silver Box. Rec'd—February 22, 2006. Est. Value—$420. Location—Official Use in the Department of State Museum.	General Omar Soliman, Director of the Egyptian General Intelligence Service.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Perfume and Incense in Wood Box. Rec'd—February 22, 2006. Est. Value—$550. Disposition—Transferred to General Services Administration.	His Royal Highness Prince Saud Al Faisal, Minister of Foreign Affairs of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Condoleezza Rice, Secretary of State.	Gold Replica of the Maqta Bridge Fort. Rec'd—February 23, 2006. Est. Value—$650. Location—Official Use in the Department of State Museum.	His Excellency Sheikh Abdullah bin Zayed Al Nahyan, Minister of Foreign Affairs of the United Arab Emirates.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Gold Plated silver Pendant; accompanied by official certificate. Rec'd—April 25, 2006. Est. Value—$390. Location—Official Use in the Department of State Museum.	His Excellency Kostas Karamanlis, Prime Minister of the Hellenic Republic (Greece).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Book: *Ludwig Van Beethoven,* with rare Offenbach reprints of Beethoven's piano sonatas. Rec'd—April 4, 2006. Est. Value—$430. Location—Official Use in Secretary Rice's Office.	His Excellency Frank-Walter Steinmeier, Minister of Foreign Affairs of the Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	One bottle of perfume, one bottle of incense, and book: *The Land of Incense.* Rec'd—May 12, 2006. Est. Value—$495. Disposition—Transferred to General Services Administration.	His Excellency Yousuf bin Alawi bin Abdullah, Minister Responsible for Foreign Affairs of the Sultanate of Oman.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Large tan/neutral rug. Rec'd—March 4, 2006. Est. Value—$500. Location—Official Use in Office of the Chief of Protocol.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Book: *Twentieth Century Impressions of Ceylon.* Rec'd—January 5, 2006. Est. Value—$340. Location—Official Use in Office of the Chief of Protocol.	The Honorable Mangala Samaraweera, Minister of Foreign Affairs and Minister of Ports and Aviation of the Democratic Socialist Republic of Sri Lanka.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Large framed portrait of Secretary Rice, and a light blue quilt with inscription. Rec'd—March 21, 2006. Est. Value—$1,400. Location—Official Use in the Department of State Museum.	Her Excellency Ellen Johnson Sirleaf, President of the Republic of Liberia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Large red leather jewelry type box full of dates, 8 bottles of olive oil, and six bottles of wine. Rec'd—December 21, 2006. Est. Value—$381. Disposition—Pending transfer to General Services Administration.	His Excellency Line El Abidine Ben Ali, President of the Republic of Tunisia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Baccarat Crystal Vase. Rec'd—May 10, 2006. Est. Value—$780. Disposition—Pending transfer to General Services Administration.	His Excellency Philippe Douste-Blazy, Minister of Foreign Affairs of the French Republic.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Wooden Box with red velvet lining, 7 hand painted framed china discs with enamel paintings of Russian Churches. Rec'd—October 31, 2006. Est. Value—$525. Disposition—Pending transfer to General Services Administration.	His Excellency Sergey Ivanov Minister of Defense for the Russian Federation.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Condoleezza Rice, Secretary of State.	Multi-colored orange and green print chiffon silk scarf with turquoise embroidery by Sanseverino Napoli, and black pebble leather draw string tote with white stitching and handles. Rec'd—October 23, 2006. Est. Value—$675. Disposition—Pending transfer to General Services Administration.	His Excellency Clemente Mastella, Minister of Justice of the Italian Republic.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Two crystal vases, and two crystal candle stick holders. Rec'd—September 12, 2006. Est. Value—$370. Disposition—Pending transfer to General Services Administration.	The Honorable Peter MacKay, P.C., M.P., Minister of Foreign Affairs of Canada.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Two silk scarves, silk with metallic threads, one carry silk bag, one zippered clutch, one piece of green silk, and one brooch. Rec'd—November 20, 2006. Est. Value—$320. Disposition—Pending transfer to General Services Administration.	Mrs. Ani Bambang Yudhoyono, Spouse of the President of Indonesia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	18k White gold and diamond earrings, necklace, ring and bracelet. Rec'd—October 2, 2006. Est. Value—$12,000. Disposition—Pending transfer to General Services Administration.	Custodian of the Two Holy Mosques, Abdallah bin Abd al-Aziz Al Saud, King of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Pottery Vase. Rec'd—November 16, 2006. Est. Value—$385. Disposition—Pending transfer to General Services Administration.	His Excellency Pham Gia Khiem, Deputy Prime Minister and Minister of Foreign Affairs of the Socialist Republic of Vietnam.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Afghan Rug. Rec'd—October 16, 2006. Est. Value—$800. Disposition—Pending transfer to General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Yellow plaque—water lilies and leaves, with presentation name. Rec'd—November 19, 2006. Est. Value—$450. Disposition—Pending transfer to General Services Administration.	Mr. Le Hoang Quan, Chairman, Ho Chi Minh City People's Committee.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Two beaded lamp shades, two beaded/embroidered photo frames, two beaded/embroidered pillow cases, sterling jewelry set with earrings, ring, necklace—semi-precious stones, raw silk. Received—October 11, 2006. Est. Value—$550. Disposition—Pending transfer to General Services Administration.	Mrs. Begum Sehba Musharraf, Wife of the President of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Condoleezza Rice, Secretary of State.	Rug: earth tones in burgundy bag. Rec'd—August 15, 2006. Est. Value—$1,100. Disposition—Pending transfer to General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Technical Sergeant Heaton, Project and Contracting Office, Management Office Baghdad.	21K Gold bracelets with gems, 21 inch, 21 inch, 21K gold necklace, Mans gold ring, and 5 gold coins. Rec'd—August 2004. Reported—December 26, 2006. Est. Value—$2,675. Disposition—Transferred to General Services Administration.	Employees of Rabban Al-Safina, Baghdad, Iraq.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Philip D. Zelikow, Counselor of the Department of State.	3 x 5 ft Persian Rug/Wall hanging. Main colors: blue, pink, and yellow. Rec'd—October 10, 2006. Est. Value—$1,500. Disposition—Pending transfer to General Services Administration.	His Excellency Jalal Talabani, President of the Republic of Iraq.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ambassador James Jeffries, Deputy Chief of Mission, Baghdad, Iraq.	22K gold and gems (pearls and precious gems) jewelry suite that includes necklace, bracelet, earrings and ring. Rec'd—December 26, 2006. Est. Value—$1,800. Disposition—Transferred to General Services Administration.	Government Official of Baghdad, Iraq; Unknown.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Elizabeth Cheney, Principal Deputy Assistant Secretary, Near Eastern Affairs.	Set of tear drop topaz gemstone earrings by H. Stern. Rec'd—February 27, 2006. Est. Value—$350. Disposition—Transferred to General Services Administration.	Amal Mudallali, Advisor, Government of Lebanon.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Elizabeth Cheney, Principal Deputy Assistant Secretary, Near Eastern Affairs.	Two Hermes silk scarves; ($450 each). Rec'd—January 24, 2006. Est. Value—$900. Disposition—Transferred to General Services Administration.	Saad Hariri, Member of Parliament of the Republic of Lebanon.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Robert B. Zoellick, Deputy Secretary of State.	Agate horse with monkey on its back. Rec'd—January 2005. Reported—May 26, 2006. Est. Value—$550. Disposition—Transferred to General Services Administration.	Xi Jinping, Secretary of the CPC (Communist Party of China) Zhejiang Provincial Committee.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Elizabeth Dibble, Deputy Assistant Secretary.	Ladies Cartier silver and gold watch. Rec'd—March 7, 2006. Est. Value—$2,100. Disposition—Transferred to General Services Administration.	Saad Hariri, Member of the Lebanese Parliament.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ryan C. Crocker, Ambassador to Iraq, on behalf of U.S. Embassy Baghdad Official (Unknown).	Set of six 21K gold bracelets with rope design. Rec'd—2005 or Before. Reported—May 26, 2006. Est. Value—$1,578. Disposition—Transferred to General Services Administration.	Government Official of Baghdad, Iraq; Unknown.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ryan C. Crocker, Ambassador to Iraq, on behalf of U.S. Embassy Baghdad Official (Unknown).	Jewelry Set: 21K gold and cubic zirconium, necklace, bracelet, earrings, and ring in wooden box—ribbon design. Rec'd—2005 or Before. Reported—May 26, 2006. Est. Value—$1,020. Disposition—Transferred to General Services Administration.	Government Official of Baghdad, Iraq; Unknown.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ryan C. Crocker, Ambassador to Iraq, on behalf of U.S. Embassy Baghdad Official (Unknown).	Candino Swiss Watch—sapphire, gold band and gold face, in blue jewelry box. Rec'd—2005 or Before. Reported—May 26, 2006. Est. Value—$1,850. Disposition—Transferred to General Services Administration.	Government Official of Baghdad, Iraq; Unknown.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Christopher J. Amyes, Resident Agent-in-charge, Phoenix Resident Office.	Two Men's Watches: 1—Men's Pippo moon watch encrusted with diamonds ($3,700) and 2—Men's Rolex Explorer—stainless steel ($3,300). Rec'd—September 21, 2006. Est. Value—$7,000. Disposition—Transferred to General Services Administration.	Sheikh Tamin bin Hamad Al-Thani, Heir Apparent, Royal family of Qatar.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Gamal Halal, Interpreter, United States Consult Jeddah.	Tiffany & Co. sterling silver watch. Rec'd—October 2, 2006. Est. Value—$1,400. Disposition—Transferred to General Services Administration.	Abdallah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Kathleen T. Kerr, Political Officer, GSO (General Services Officer).	Gio Monaco Watch. Rec'd—March 10, 2006. Est. Value—$22,000. Disposition—Transferred to General Services Administration.	Abdallah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Sean McCormack, Assistant Secretary for Public Affairs and Spokesman.	Tiffany & Co. sterling silver watch. Rec'd—October 2, 2006. Est. Value—$1,400. Disposition—Transferred to General Services Administration.	Abdallah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
David Welch, Assistant Secretary for Near Eastern Affairs.	Tiffany & Co. Watch, 18k gold with black alligator band. Rec'd—October 2, 2006. Est. Value—$3,200. Disposition—Transferred to General Services Administration.	Abdallah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Michael Gfoeller, Deputy Chief of Mission, Saudi Arabia.	Bedat & Co. No. 8 Watch inside silver box with inscription. Rec'd—December 19, 2005. Reported—January 1, 2007. Est. Value—$525. Disposition—Pending transfer to General Services Administration.	Abdallah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Elinor LeBaron, Wife of the Ambassador to Mauritania.	Necklace and Earring Set. Rec'd—August 10, 2006. Est. Value—$335. Disposition—Pending transfer to General Services Administration.	Madame Marieme Fall Mint Koyeimel, Director General of Sapad, Mauritania.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Chase Untermeyer, US Ambassador to Qatar.	Epos Automatic Watch. Rec'd—May 14, 2005. Reported—May 31, 2007. Est. Value—$989. Disposition—Pending transfer to General Services Administration.	Major General Hamad Al-Attiyah, Chief of Staff, Qatari Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Chase Untermeyer, US Ambassador to Qatar.	Paco Rabanne Gift Set including Watch, Wallet, Cufflinks, and a pen. Rec'd—2005. Reported—May 31, 2007. Est. Value—$385. Location—Official Use; On Permanent Display in the U.S. Consulate General Frankfurt Office Building.	Major General Hamad Al-Attiyah, Chief of Staff, Qatari Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Diana Untermeyer, Spouse of Ambassador Chase Untermeyer.	Hermes leather horse saddle. Rec'd—October 21, 2005. Reported—2007. Est. Value—$4,300. Disposition—Transferred to General Services Administration.	His Highness Sheikh Hamad Bin Khalifa Al-Thani, Amir of the State of Qatar.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Elly Untermeyer, Daughter of Ambassador Chase Untermeyer.	Hermes leather horse saddle. Rec'd—October 21, 2005. Reported—2007. Est. Value—$4,300. Disposition—Transferred to General Services Administration.	His Highness Sheikh Hamad Bin Khalifa Al-Thani, Amir of the State of Qatar.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Eric James Donelan, Special Agent, DS/FLD/NYFO/PL.	Clerc Stainless Steel Silver Scuba Watch with Blue Face, Fluorescent dials, and sapphire crystal glass. Rec'd—September 21, 2006. Est. Value—$1,200. Disposition—Pending transfer to General Services Administration.	His Excellency Nassir Abdulaziz, Ambassador to the United Nations of the Country of Qatar.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James C. Oberwetter, US Ambassador to Saudi Arabia.	Gio Monoco Watch. Rec'd—June 27, 2006. Est. Value—$1,200. Disposition—Pending transfer to General Services Administration.	Abdallah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James C. Oberwetter, US Ambassador to Saudi Arabia.	Tiffany & Co. Men's Sterling Silver Watch. Rec'd—October 3, 2006. Est. Value—$3,800. Disposition—Pending transfer to General Services Administration.	Abdallah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James Oberwetter, U.S. Ambassador to Saudi Arabia.	Vittorio Vercelli watch, wallet and key chain set. Rec'd—2004. Reported—2006. Est. Value—$450. Disposition—Transferred to General Services Administration.	Government Official, Saudi Arabia, Unknown.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James Oberwetter, U.S. Ambassador to Saudi Arabia.	S.J. Dupon pen and lighter set. Rec'd—February 12, 2004. Reported—2006. Est. Value—$750. Disposition—Transferred to General Services Administration.	His Royal Highness Abdallah bin Abd al-Aziz Al Saud, Crown Prince of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Anita Oberwetter, Wife of the U.S. Ambassador to Saudi Arabia.	Perfume Set in White case with red velvet lining ($92); 18K Gold Earrings ($76); 21K gold jewelry set; ring, necklace, earrings ($232). Rec'd—November, 2006. Est. Value—$400. Disposition—Pending transfer to General Services Administration.	The half sister of Abdallah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ambassador Donald Burnham Ensenat, U.S. Chief of Protocol.	Bank of Kuwait Gold Coin. Rec'd—September 12, 2003. Reported—2006. Est. Value—$1,020. Disposition—Pending transfer to General Services Administration.	His Highness Shaykh Saad al-Abdullah al-Salim Al Sabah, Prime Minister of the State of Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ambassador Donald Burnham Ensenat; U.S. Chief of Protocol.	Brown Leather basket weave Western Saddle with separate Western small brass plaque, leather bridle, and orange and blue plaid horse blanket. Rec'd—April 2006. Est. Value—$1,000. Disposition—Returned to Donor; Embassy of the Islamic Republic of Pakistan.	His Excellency Shaukat Aziz; Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ambassador Donald Ensenat, Chief of Protocol.	Set of 6 gold coins from the Central Bank of Kuwait. Rec'd—July 7, 2005. Reported—2006. Est. Value—$500. Disposition—Transferred to General Services Administration.	His Excellency Sabah Al-Ahmad Al-Jaber Al-Saba, Prime Minister of the State of Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Elaine Neumann, Wife of the U.S. Ambassador to Bahrain.	Jewelry Set: yellow and white gold necklace, earrings and ring. Rec'd—June 2004. Reported—February 2007. Est. Value—$1,960. Disposition—Pending transfer to General Services Administration.	Sheika Sabika Bint Ibrahim Al Khalifa, wife of the King of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Jo Ellen Powell, Consul General, Germany.	Framed Print by local German Artist Gerd Kehrer. Rec'd—October 19, 2006. Est. Value—$1,035. Location—Retained for Official Use at U.S. Consulate General Residence in Frankfurt, Germany.	Werner Sigmund, Chief Executive Officer, International Bund; Germany.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Abigail Friedman, Consul General Quebec City.	Inuit Carving. Rec'd—December 20, 2006. Est. Value—$800. Location—Retained for Official Use at U.S. Consulate General Residence in Quebec City, Canada.	Karen Fingas, Director, Community and Economic Development, Government of Nunavut.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James Pardew, U.S. Ambassador to Bulgaria, on behalf of the Embassy, Sofia, Bulgaria.	Icon: Glass and Ceramic Mosaic by Starvi Kalinov. Rec'd—December 14, 2004. Reported—2006. Est. Value—$450. Location—Official Use; Office of the Chief of Protocol.	His Excellency Nikolay Svinarov, Minister of Defense of the Republic of Bulgaria.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
John Ordway, U.S. Ambassador to Kazakhstan.	Crystal Bottle of Baiterek Cognac-Bottle in replica of Astana Tower—all inside wooden case. Rec'd—July 27, 2006. Est. Value—$450. Location—Official Use; On display in atrium at Embassy in Kazakhstan.	His Excellency Akhetzhan Yesimov, Minister of Agriculture of the Republic of Kazakhstan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
John Ordway, U.S. Ambassador to Kazakhstan.	Chinese Coins—Collector Antique coins. Rec'd—February 21, 2006. Est. Value—$350. Disposition—Pending transfer to General Services Administration.	His Excellency Zhang Ziyun, Chinese Ambassador to Kazakhstan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Todd Burkes, Assistant to RSD (Refugee Status Determination), Sofia.	Watch, men's Candino, gold Swiss-made-Taurus sapphire model. Rec'd—May 2, 2006. Est. Value—$323. Disposition—Transferred to General Services Administration.	RSD Staff (Refugee Status Determination), Republic of Bulgaria.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Richard A. Boucher, Consul General, on behalf of the American Consulate in Hong Kong; Unknown.	Gold and diamond tie pin. Rec'd—Prior July 2002. Reported—April 2006. Est. Value—$325. Disposition—Transferred to General Services Administration.	Government Official, Hong Kong, the People's Republic of China; Unknown.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Richard A. Boucher, Consul General, on behalf of the American Consulate in Hong Kong; Unknown.	Blue Hermes Scarf. Rec'd—Prior July 2002. Reported—April 2006. Est. Value—$320. Disposition—Transferred to General Services Administration.	Government Official, Hong Kong, the People's Republic of China; Unknown.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Richard A. Boucher, Consul General of the American Consulate in Hong Kong.	Baccarat Crystal Piece for 1997 turnover of Hong Kong to China. Rec'd—Prior July 2002. Reported—April 2006. Est. Value—$900. Disposition—Transferred to General Services Administration.	Government Official, Hong Kong, the People's Republic of China; Unknown.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Richard A. Boucher, Consul General of the American Consulate in Hong Kong.	Mount Blanc Pen with Name engraved. Rec'd—Prior July 2002. Reported—April 2006. Est. Value—$305. Disposition—Transferred to General Services Administration.	Government Official, Hong Kong, the People's Republic of China; Unknown.	Non-acceptance would have caused embarrassment to donor and U.S. Government
George H. Atkinson, Science and Technology Adviser to the Secretary.	Craft: Framed Picture. Rec'd—September 15, 2006. Est. Value—$900. Disposition—Pending transfer to General Services Administration.	STS Forum (Solutions to Satisfaction—Logistics Forum), Hong Kong, the People's Republic of China.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Gary Grappo, United States Ambassador to the Sultanate of Oman, on behalf of the U.S. Embassy in Muscat.	Amber Glass Horse Head. Rec'd—May 2006. Est. Value—$2,361. Location—Official Use, DMR, Embassy Muscat.	Sheikh Saud Bahwan, Tribal Sheikh, Sultanate of Oman.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
John Campbell, United States Ambassador to Nigeria.	Book: "Flora de la Real Expedicion Botanica del Nuevo Reino de Granada" by Jose Celestino. Rec'd—December, 2005. Reported—2007. Est. Value—$660. Disposition—Transferred to General Services Administration.	Alfonso Manuel Portabales Vazquez, Ambassador, Embassy of Spain to Nigeria.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Clark T. Randt, Jr., United States Ambassador to the People's Republic of China, on behalf of the U.S. Embassy Beijing.	Crystal Obelisk on a wooden stand that is a replica of an antique Chinese decoration. Rec'd—July 13, 2006. Est. Value—$400. Location—Retained for Official Use, in display at Ambassador's Residence.	Government Official from the Chinese Ministry of Defense; the People's Republic of China, Unknown.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Clark T. Randt, Jr., United States Ambassador to the People's Republic of China, on behalf of the U.S. Embassy Beijing.	Theo Fennel Sterling Silver Plate 3¾″ in diameter. Rec'd—December 5, 2006. Est. Value—$320. Location—Retained for Official Use, in display at Ambassador's Residence.	Her Royal Highness Sarah Ferguson, Duchess of York.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Meghan O'Sullivan, Special Assistant to the President and Senior Director.	Silver ewer; 13¼″, silver punch and repousse decorated with figural motifs and scrolls, bird head, spout, 20th Century, 34 oz. Rec'd—2004 Reported—2006. Est. Value—$400. Disposition—Pending transfer to General Services Administration.	His Excellency Adil Mahdi, Deputy Government Council Member/Deputy President of the Republic of Iraq.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Meghan O'Sullivan, Special Assistant to the President and Senior Director.	22K gold and diamond suite of jewelry, Kurdish, including: necklace ($1,250), bracelet ($650), earrings ($375), and ring ($250). Rec'd—2004. Reported—2006. Est. Value—$2,525. Disposition—Pending transfer to General Services Administration.	His Excellency Mazud Barzam Governing Council Member of the Republic of Iraq.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Meghan O'Sullivan, Special Assistant to the President and Senior Director.	Unframed Painting; oil on canvas laid down on masonite of two men dyeing fabric, by Baran Serwan (born 1968), Iraq, dated 2003, size 19¾″ x 27⅝″. Rec'd—December 2003. Reported—2006. Est. Value—$300. Disposition—Pending transfer to General Services Administration.	His Excellency Ahmed Chalabi, Governing Council Member of the Republic of Iraq.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Meghan O'Sullivan, Special Assistant to the President and Senior Director.	Large wool rug, 6′ 4″ x 3′ 8″, red field with three lozenge medallions, blue astragals, four borders with ivory main, Kurdish, late 20th century. Rec'd—2004. Reported—2006. Est. Value—$350. Disposition—Pending transfer to General Services Administration.	John Sawers, British Senior Representative to Coalition Provisional Authority of the United Kingdom.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Meghan O'Sullivan, Special Assistant to the President and Senior Director.	Rug with turquoise weave: 6′ 5″ x 4′, flat weave, ivory field with six latch hook medallions and overall polychrome bird and quadruped motifs, three borders with salmon main, Soumak, late 20th century. Rec'd—2004. Reported—2006. Est. Value—$600. Disposition—Pending transfer to General Services Administration.	His Excellency Rowsch Shaways, Deputy Governing Council Member, Deputy President of the Republic of Iraq.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Leo Bournes, Information Management Officer, on behalf of the U.S. Embassy Riyadh.	Gold watch. Rec'd—2004 or Before. Reported—2006. Est. Value—$450. Disposition—Transferred to General Services Administration.	Government Official on behalf of the Kingdom of Saudi Arabia, Unknown.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Robert Jordan, former United States Ambassador to Saudi Arabia.	Large brown briefcase by Pierre Cardin. Rec'd—November 2001. Reported—2006. Est. Value—$650. Disposition—Transferred to General Services Administration.	Riyadh, Chamber of Commerce of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ralph Frank, United States Ambassador to Croatia.	Seven pen and ink hand drawings: 1. Zlatko pen and ink drawing "Portrait of a Man and His Alter Ego"; 2. Tinted pen and ink drawing "Forrest" by Ivan Lackovic Croata; 3. Agua-tinta "Church of St. Mark in Zagreb" by Hamo Cavrk; 4. Agua-tinit "Zagreb Panorama" by Hamo Cavrk; 5. Pen and ink drawing "Tradition" by Vasilije Josip Jordan; 6. Pen and ink drawing "Couple in Ecstasy" by Dubravka Babic; 7. Pen and ink drawing "Portrait in Ecstasy" by Dubravka Babic. Rec'd—January 12, 2005. Reported—2007. Est. Value—$407. Disposition—Pending transfer to General Services Administration.	His Excellency Bozo Biskupic, Minister of Culture of the Republic of Croatia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ambassador Victoria Nuland, United States North Atlantic Treaty Organization.	Computer: Fujitsu/Siemens Amilo Pro Model V3205 Notebook. Rec'd—December 13, 2006. Est. Value—$950. Location—Retained for Official Use at the office of Ambassador Nuland for the United States North Atlantic Treaty Organization.	Conference on North Atlantic Treaty Organization and Gulf Countries, from Government of Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lauren Moriarty, U.S. Senior Official for APEC, (Asia-Pacific Economic Cooperation).	Ladies 18K gold and APEC Security Lapel Pin. Rec'd—October 20, 2003 Reported—September 2007. Est. Value—$485. Disposition—Pending transfer to General Services Administration.	His Excellency Thaksin Shinawatra, Prime Minister of the Kingdom of Thailand.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
M. Hanscomb Smith, Political Counselor, Embassy Kabul.	Silk Mowri Afghan Carpet, 2 meters x 3 meters. Rec'd—July 16, 2005 Reported—August 2005. Est. Value—$450. Location—Official Use in Office Building at Kabul Embassy.	Ibrahim Spinzada, Deputy NSA and Engineer, Government of Afghanistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
John Negroponte, U.S. Ambassador of Iraq.	Silk Rug. Rec'd—March 2005 Reported—2005. Est. Value—$1,000. Location—Official Use at Embassy Baghdad in Executive Offices.	His Excellency Ayed Allawi, Prime Minister of Iraq.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Susan Unruh, Vice Consul General, U.S. Embassy Riyadh.	Women's Swiss Watch, "Faconnable" collection with 39 diamonds. Rec'd—June 2006. Disposition—Pending Transfer to General Services Administration.	His Royal Highness Abdallah bin Abd al-Aziz Al Saud, Crown Prince of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF TREASURY

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Henry M. Paulson, Jr. Secretary of Treasury.	Songyuan crafted white jade abacus. Rec'd—September 20, 2006. Est. Value—$359. Location—Treasury retained for Official Use on October 12, 2006.	Wu Yi Vice Premier of the State Council Govt. of People's Republic of China.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Robert M. Kimmitt Deputy Secretary.	Louis Cardini Leather Executive Business Case. Rec'd—November 18, 2006. Est. Value—$450. Location—Treasury retained for Official Use on November 28, 2006.	Government of Australia	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Robert Gates, Secretary of Defense.	Rug. Rec'd—December 29, 2006. Est. Value—$5,600. Disposition—Pending transfer to General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Abstract painting in Plum & White, Decorative Plate by Rosenthal, Set of 4 Decorative Boxes, Wood Gift Box. Rec'd—January 4, 2006. Est. Value—$385. Disposition—Pending transfer to General Services Administration.	Their Majesties King Abdullah II bin Al Hussein and Queen Rania, of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Small Silver Tree, Country Plaque, Book-Image in Stone Tunisia Mosaic, Olive Oil. Rec'd—February 14, 2006. Est. Value—$345. Disposition—Pending transfer to General Services Administration.	His Excellency, Abdelwaheb Abdallah, Minister of Foreign Affairs of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Saber, Case of Wine, 10 Boxes of Dates, Rug 11″ 8′ x 8″ 4′. Rec'd—February 14, 2006. Est. Value—$2,822. Disposition—Pending transfer to General Services Administration.	His Excellency, Abdelaziz Bouteflika, President of the People's Democratic Republic of Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Book on Horses, Gold Stirrup, Saddle and accessories, Plaque, Cuff links/Accessory kit. Rec'd—February 14, 2006. Est. Value—$1,330. Disposition—Pending transfer to General Services Administration.	His Majesty, Mohamed VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Silver Bowl, Book—Marrakesh The Secret of its Courtyard. Rec'd—February 14, 2006. Est. Value—$305. Disposition—Pending transfer to General Services Administration.	His Excellency, Driss Jettou, Prime Minister of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Gold Bracelet. Rec'd—March 7, 2006. Est. Value—$775. Disposition—Pending transfer to General Services Administration.	Field Marshal Hussein Tantawi and Mrs. Wagida Rasem Tantawi, Minister of Defense of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Wood Chess Set, Assorted Treats in a Wood Box. Rec'd—April 26, 2006. Est. Value—$425. Disposition—Pending transfer to General Services Administration.	His Excellency, Jalal Talabani, President of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Polished Cotton Rug. Rec'd—May 15, 2006. Est. Value—$650. Disposition—Pending transfer to General Services Administration.	His Excellency, Dr. Abdullah Abdullah, Minister of Foreign Affairs of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Vase, Silk Fabric, Framed Artwork. Rec'd—June 8, 2006. Est. Value—$1,415. Disposition—Pending transfer to General Services Administration.	General Pham Van TRA, Minister of National Defense of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Rug, Afghan Robe, Turban. Rec'd—July 14, 2006. Est. Value—$1,370. Disposition—Pending transfer to General Services Administration.	Governor Dilbar Jan Arnan, Jabol Province, of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Rug. Rec'd—July 14, 2006. Est. Value—$1,400. Disposition—Pending transfer to General Services Administration.	His Excellency, Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Framed Artwork. Rec'd—July 14, 2006. Est. Value—$400. Disposition—Pending transfer to General Services Administration.	His Excellency, Emomali Rahmonov, President of the Republic of Tajikistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Framed World Map. Rec'd—October 23, 2006. Est. Value—$350. Disposition—Pending transfer to General Services Administration.	His Excellency, Jose Antonio Alonso, Minister of Defense of Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Scarf and Earrings, Gold and Wood Country Plaque, Silver and Wood Country Plaque, Marina Book with two CD's. Rec'd—October 30, 2006. Est. Value—$479. Disposition—Pending transfer to General Services Administration.	Admiral Marco Antonio Peyrot, Secretary of the Navy of Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Silver Vase, Silver Dish, Silver Plate. Rec'd—October 30, 2006. Est. Value—$490. Disposition—Pending transfer to General Services Administration.	His Excellency, Vecdi Gonul, Minister of Defense of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Blue Vase, Country Plaque, Rug. Rec'd—November 21, 2006. Est. Value—$490. Disposition—Pending transfer to General Services Administration.	His Excellency, Abdul Rahim Wardak, Minister of National Defense of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Blue and White Dish Set. Rec'd—November 20, 2006. Est. Value—$525. Disposition—Pending transfer to General Services Administration.	General Gerardo Clemente Ricardo Vega Garcia, Secretary of National Defense of Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Gordon England, Deputy Secretary of Defense.	Cologne Set, Book—The Land of Incense. Rec'd—May 16, 2006. Est. Value—$605. Disposition—Pending transfer to General Services Administration.	His Excellency, Yusuf bin Alawi bin Abdullah, Minister Responsible for Foreign Affairs of the Sultanate of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Admiral Edmund Giambastiani, Vice Chairman, Joint Chiefs of Staff.	Gold Scarab Bracelet. Rec'd—March 8, 2006. Est. Value—$400. Disposition—Pending transfer to General Services Administration.	Mrs. Waigida Tanawi, Spouse of the Minister of Defense of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Eric S. Edelman, Under Secretary of Defense (Policy).	Gold Arabian Oryx. Rec'd—November 2006. Est. Value—$365. Disposition—Pending transfer to General Services Administration.	Prince Khalid bin Sultan bin Abdulaziz, Assistant MOD and Aviation for Military Affairs, Ministry of Defense and Aviation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Kenneth J. Krieg, Under Secretary of Defense for Acquisition, Technology & Logistics.	Lion—Glass with gold inlay. Rec'd—April 20, 2006. Est. Value—$385. Disposition—Pending transfer to General Services Administration.	Lieutenant General Gianni Botondi, Secretary General of Defense and National Armaments Director, Rome, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Kenneth J. Krieg, Under Secretary of Defense for Acquisition, Technology & Logistics.	Vase/urn with a separate wood base. Rec'd—July 31, 2006. Est. Value—$440. Disposition—Pending transfer to General Services Administration.	VADM Wu, Wei-Rong, Director General, Armaments Bureau, Taiwan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Paul McHale, Assistant Secretary of Defense for Homeland Defense.	Onyx chess set on onyx board, Miniature saber and sheath, housed in a wood and glass display case, Book and CD gift set: "Rostros de la Marina", "Armada de Mexico" and Set of six CD's from the Mexican Naval Orchestra. Rec'd—November 20, 2006. Est. Value—$375. Disposition—Pending transfer to General Services Administration.	Admiral Marco Antonio Peyrot Gonzalez, Secretary of the Navy of Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Peter W. Rodman, Secretary of Defense International Security Affairs.	Dagger in a Green Leather Case. Rec'd—February 12, 2006. Est. Value—$450. Disposition—Pending transfer to General Services Administration.	Abdelaxi Bouteflika, President of The People's Democratic Republic of Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Peter W. Rodman, Secretary of Defense International Security Affairs.	Beige Carpet, L 95½ x W 76 x 45′. Rec'd—May 16, 2006. Est. Value—$900. Disposition—Pending transfer to General Services Administration.	Defense Minister Heidi M'Henni ..	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Peter W. Rodman, Secretary of Defense International Security Affairs.	Beige Carpet 29 x 44 Portrait of Five Arabians on horses. Rec'd—May 18, 2006. Est. Value—$650. Disposition—Pending transfer to General Services Administration.	Minister Del for National Abderrahmane Sbai.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Peter W. Rodman, Secretary of Defense International Security Affairs.	Large Gold Vase with Stand. Rec'd—May 24, 2006. Est. Value—$560. Disposition—Pending transfer to General Services Administration.	Chief of General Staff, Taiwan ...	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF JUSTICE

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government.	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mr. Alberto Gonzales, Attorney General of the United States.	Cartier watch with warranty and case. Rec'd—September 2006. Est. Value—$1,000—$1,500. Disposition—Pending transfer to General Services Administration.	His Excellency Dr. Ali Bin Fetais Al-Marri, Attorney General of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Alice Fisher, Assistant Attorney General—Criminal Division of the United States.	Cartier watch with warranty and case. Rec'd—November 2006. Est. Value—$1,000—$1,500. Disposition—Pending transfer to General Services Administration.	His Excellency Dr. Ali Bin Fetais Al-Marri, Attorney General of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Bruce Swartz, Deputy Assistant Attorney General—Criminal Division of the United States.	Cartier watch with warranty and case. Rec'd—December 2006. Est. Value—$1,000—$1,500. Disposition—Pending transfer to General Services Administration.	His Excellency Dr. Ali Bin Fetais Al-Marri, Attorney General of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. David Qarner, Office of International Affairs—Criminal Division of the United States.	Cartier watch with warranty and case. Rec'd—December 2006. Est. Value—$1,000—$1,500. Disposition—Pending transfer to General Services Administration.	His Excellency Dr. Ali Bin Fetais Al-Marri, Attorney General of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Mark Richard, Office of International Affairs—Criminal Division of the United States.	Cartier watch with warranty and case. Rec'd—December 2006. Est. Value—$1,000—$1,500. Disposition—Pending transfer to General Services Administration.	His Excellency Dr. Ali Bin Fetais Al-Marri, Attorney General of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF AGRICULTURE

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dr. J. B. Penn, former U.S. Department of Agriculture Under Secretary for Farm and Foreign Agricultural Service, Note: Dr. Penn is now working for the John Deere Corporation.	A man's robe; A three quarter length decorative form of attire and a hat to match; probably worn to ceremonial events in Kazakhstan. It is made of green velvet and it heavily decorated with gilt. Rec'd—July 24, 2006. Est. Value—$750. Disposition—Pending transfer to the General Services Administration Property Management Division.	The Honorable, Akhmetzhan Yessimov, Minister of Agriculture for the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
A. Ellen Terpstra, Deputy Under Secretary for Farm and Foreign Agricultural Service.	Native Vest: A full length lined women's vest (without sleeves). It is a decorative form of attire in Kazakhstan; the vest is made of velvet with a gilt motif. Rec'd—July 24, 2006. Est. Value—$600. Disposition—Pending transfer to the General Services Administration Property Management Division.	The Honorable, Akhmetzhan Yessimov, Minister of Agriculture for the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF COMMERCE

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Carlos M. Gutierrez, Secretary of Commerce.	Rug: A hand knotted Azerbaijan style rug, central diamond red design and decorated red and blue borders with fringe on the ends, 76″ x 49″. Rec'd—April 28, 2006. Est. Value—$450. Location—Official Use, Retained on display in Secretary Gutierrez's office.	His Excellency Ilham Aliyev, President of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF ENERGY

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Samuel W. Bodman Secretary of Energy.	Handmade gold vase from the Osmanti collection. Rec'd—February 9, 2006. Est. Value—$650. Disposition—currently held in Department of Energy gift vault for final appraisal paperwork, pending transfer to General Services Administration.	His Excellency Hilmi Guler, Minister of Turkish Energy & Natural Resources of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Samuel W. Bodman Secretary of Energy.	Locally made rug. Rec'd—April 28, 2006. Est. Value—$350. Disposition—currently held in Department of Energy gift vault for final appraisal paperwork, pending transfer to General Services Administration.	His Excellency Ilham Aliyev, President of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
5 U.S.C. 7342(f)(4), as amended	Rug—34″ x 46½″, silk on silk, blue and polychrome medallion on red field with polychrome scrolling, blue astragals, four borders with rust main, Iran, 21st century. Rec'd—December 18, 2006. Est. Value—$1,350. Location—Approved for Official Display.	5 U.S.C. 7342(f)(4), as amended	Non-acceptance would have caused embarrassment to donor and U.S. Government.
5 U.S.C. 7342(f)(4)	1. Chess Set—Chessmen, each side of different color, board of various inlaid and carved woods, 21⅛″ x 21″, exterior and interior of board inlaid, Iraq, 21st century. 2. Rug—38″ x 58″, silk on silk, central radiating polychrome design, four borders with multiple mihrabs main, Iran, 21st century. Rec'd—May 20, 2006. Est. Value—$2,050. Location—Approved for Official Display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
5 U.S.C. 7342(f)(4)	1. Chess Set—Chessmen, each side of different color, board of various inlaid and carved woods, 21⅛″ x 21″, exterior and interior of board inlaid, Iraq, 21st century. 2. Rug—40″ x 58″, silk on silk, pink medallion on a navy blue field with allover floral scrolling, pink astragals, eight borders with dark blue main, Iran, probably Kirman, excellent knot count, 21st century Rec'd—May 20, 2006. Est. Value—$2,100. Location—Approved for Official Display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
5 U.S.C. 7342(f)(4)	Jewelry box—7⅞″ L, silver, chased decoration to lid, velvet lined, Egypt, 21st century, fitted case. Rec'd—February 6, 2006. Est. Value—$400. Location—Approved for Official Display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
5 U.S.C. 7342(f)(4)	1. Coin—gold proof, 1000 lei, Romania 1998, 1ozT, boxed, 2. Medallion, brass tone metal and enamel, Romanian, 21st century. Rec'd—October 30, 2006. Est. Value—$790. Location—Approved for Official Display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
5 U.S.C. 7342(f)(4)	1. Dagger (jambiya), 12 inches long, typical curved steel blade and conforming silver hilt and scabbard, reproduction, 20th/21st century, sterling silver w/fretwork in blue velvet presentation case, 2. Cloth—multicolored with fringe. Rec'd—November 10, 2005. Reported—2006. Est. Value—$500. Location—Approved for Official Display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
5 U.S.C. 7342(f)(4)	1. Chess Set—Chessmen, each side of different color, board of various inlaid and carved woods, 21⅛″ x 21″, exterior and interior of board inlaid, Iraq, 21st century. 2. Rug—38″ x 57″, silk on silk, central radiating polychrome design, four borders with multiple mihrabs main, Iran, 21st century. Rec'd—May 20, 2006. Est. Value—$2,050. Location—Approved for Official Display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to the donor and U.S. Government.

AGENCY: UNITED STATES SENATE

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Gabriel Bitol, Special Assistant to the Democratic Staff Director, Committee on Foreign Relations.	Decorative boxes with painting. Rec'd—January 16, 2006. Est. Value—$400. Disposition—With the Secretary of the Senate.	His Majesty King Abdullah II bin Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause donor embarrassment.
Hillary Clinton, U.S. Senator	Silver replica of a rickshaw. Rec'd—January 2006. Est. Value—$200. Disposition—With the Secretary of the Senate.	Lutfozzaman Babar, State Minister of Home Affairs, People's Republic of Bangladesh.	Non-acceptance would cause donor embarrassment.
Hillary Clinton, U.S. Senator	Silver Picture Frame. Rec'd—March 16, 2006. Est. Value—$200. Location—Displayed in SR–464A for Official Use.	His Excellency Bertie Ahern, TD, Prime Minister of Ireland.	Non-acceptance would cause donor embarrassment.
Russell Feingold, U.S. Senator	Two mouth-blown crystal wine glasses. Rec'd—February 20, 2006. Est. Value—$150. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Thaksin Shinawatra, Prime Minister of the Kingdom of Thailand.	Non-acceptance would cause donor embarrassment.
Russell Feingold, U.S. Senator	Iraqi chess set. Rec'd—November 27, 2006. Est. Value—$160. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Jalal Talabani, President of the Republic of Iraq.	Non-acceptance would cause donor embarrassment.
Dianne Feinstein, U.S. Senator	Book of Illustrations by Manmoud Farshcian. Rec'd—June 9, 2006. Est. Value—$600. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	Ambassador Javad Zarif, Permanent of the Islamic Republic of Iran to the United Nations.	Non-acceptance would cause donor embarrassment.
Bill Frist, U.S. Senator	Small handwoven Oriental Rug. Rec'd—September 26, 2006. Est. Value—$400. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause donor embarrassment.
Bill Frist, U.S. Senator	Menorah, silver w/multi-colored decorative engravings. Rec'd—November 13, 2006. Est. Value—$300. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Ehud Olmert, Prime Minister of the Government of Iraq.	Non-acceptance would cause donor embarrassment.
Bill Frist, U.S. Senator	Blue Pelikan Fountain Pen w/ gold trim with the Minister of Germany's signature. Rec'd—April 4, 2006. Est. Value—$181. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Frank-Walter Steinmeier, Minister of Foreign Affairs of the Federal Republic of Germany.	Non-acceptance would cause donor embarrassment.
Lindsey Graham, U.S. Senator	3 x 5 Rug. Rec'd—October 3, 2006. Est. Value—Over $100. Location—Displayed in SR–293 for Official Use.	Attorney General Abdul Jabar Sabit of the Islamic Republic of Afghanistan.	Non-acceptance would cause donor embarrassment.
Lindsey Graham, U.S. Senator	3 x 5 Rug. Rec'd—December 13, 2006. Est. Value—$300. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Jalal Talabani, President of the Republic of Iraq.	Non-acceptance would cause donor embarrassment.

AGENCY: UNITED STATES SENATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Chuck Hagel, U.S. Senator	Vase. Rec'd—October 6, 2006. Est. Value—Over $100. Disposition—Displayed in SR–248.	National Assembly Chairman Nguyen Phu Trong.	Non-acceptance would cause donor embarrassment.
Chuck Hagel, U.S. Senator	Hand embroidered picture in gold frame. Rec'd—October 4, 2006. Est. Value—Over $100. Disposition—Displayed in SR–249 for Official Use.	Le Thanh Hai, Secretary of the Party Committee Ho Chi Minh City.	Non-acceptance would cause donor embarrassment.
David Katz, Special Assistant Office of Senator Barack Obama.	Hand-carved chess set & ornamental box. Rec'd—February 16, 2006. Est. Value—$150. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Jalal Talabani, President of the Republic of Iraq.	Non-acceptance would cause donor embarrassment.
John Kerry, U.S. Senator	3 x 5 Carpet. Rec'd—January 16, 2006. Est. Value—$250. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause donor embarrassment.
Carl Levin, U.S. Senator	Blue Lapis Lazuli Bowl. Rec'd—November 14, 2006. Est. Value—$480. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	Defense Minister General Abdul Rahim Wardak, Government of the Islamic Republic of Afghanistan.	Non-acceptance would cause donor embarrassment.
Carl Levin, U.S. Senator	Lapis Lazuli Box, blue w/gold inside. Rec'd—March 2006. Est. Value—$750. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause donor embarrassment.
Carl Levin, U.S. Senator	Chess Set. Rec'd—October 2, 2006. Est. Value—$160. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Jalal Talabani, President of the Republic of Iraq.	Non-acceptance would cause donor embarrassment.
Richard Lugar, U.S. Senator	Small Ceramic Vase. Rec'd—December 12, 2006. Est. Value—Over $100. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	Representative David Tawei and Lin Chin Lee of Taipei Economic and Cultural Representative office-Embassy of Taiwan.	Non-acceptance would cause donor embarrassment.
Richard Lugar, U.S. Senator	Hand-carved wooden wall hanging of Kumul bird of paradise. Rec'd—October 10, 2006. Est. Value—Over $100. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	Ambassador Evan Paki of Papua, New Guinea.	Non-acceptance would cause donor embarrassment.
Richard Lugar, U.S. Senator	Hand-carved wooden wall hanging of Kumul bird of paradise. Rec'd—October 10, 2006. Est. Value—Over $100. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	Ambassador Evan Paki of Papua, New Guinea.	Non-acceptance would cause donor embarrassment.

AGENCY: UNITED STATES SENATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Richard Lugar, U.S. Senator	Ceramic bird paperweight by Royal Crown Derby. Rec'd—July 10, 2006. Est. Value—$109.95. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	Right Honorable Margaret Beckett, Foreign Secretary of the United Kingdom.	Non-acceptance would cause donor embarrassment.
Richard Lugar, U.S. Senator	Large, reddish, Persian-type rug. Rec'd—May 3, 2006. Est. Value—Over $100. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Ilham Aliyev, President of the Republic of Azerbaijan.	Non-acceptance would cause donor embarrassment.
Richard Lugar, U.S. Senator	6 x 5 Amethyst from Uruguay. Rec'd—May 2, 2006. Est. Value—Over $100. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Tabare Vazquez, President of the Oriental Republic of Uruguay.	Non-acceptance would cause donor embarrassment.
Keith Luse, Senior Professional Staff Member, Foreign Relations Committee.	Hand-embroidered tablecloth and napkins. Rec'd—December 21, 2005. Reported—2006. Est. Value—$100. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	Vu Tu Nguyen, Foreign Ministry Government of the Socialist Republic of Vietnam.	Non-acceptance would cause donor embarrassment.
John McCain, U.S. Senator	Montenegrin Sentinel statue. Rec'd—August 29, 2006. Est. Value—$300. Disposition—Displayed in SR–241 for Official Use.	The Honorable Milo Dukanovic, Prime Minister of the Republic of Montenegro.	Non-acceptance would cause donor embarrassment.
John McCain, U.S. Senator	Antique Sword. Rec'd—August 26, 2006. Est. Value—Over $100. Disposition—Displayed in SR–241 for Official Use.	His Excellency Mikhil Saakashvili, President of Georgia.	Non-acceptance would cause donor embarrassment.
John McCain, U.S. Senator	Blue Carved Stone Box. Rec'd—December 5, 2006. Est. Value—$200. Disposition—Displayed in SR–241 for Official Use.	General Abdul Rahim Wardak, Minister of Defense of the Islamic Republic of Afghanistan.	Non-acceptance would cause donor embarrassment.
John McCain, U.S. Senator	Carved Stone Box w/ flowers on lid. Rec'd—December 15, 2006. Estimated Value—$200. Disposition—Displayed in SR–241 for Official Use.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause donor embarrassment.
John McCain, U.S. Senator	Persian Rug. Rec'd—December 15, 2006. Est. Value—$300 to $400. Disposition—Displayed in SR–241 for Official Use.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause donor embarrassment.
Mitch McConnell, U.S. Senator	Ceramic vase from Taihwa Pottery Company with wooden stand. Rec'd—December 11, 2006. Est. Value—$225 to $300. Disposition—Displayed in S–230 for Official Use.	David Tawei Lee and Lin Chih Lee, Government of Taiwan.	Non-acceptance would cause donor embarrassment.
Mark Pryor, U.S. Senator	Carved Wood Chess Set. Rec'd—October 3, 2006. Est. Value—$160. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Jalal Talabani, President of the Republic of Iraq.	Non-acceptance would cause donor embarrassment.

AGENCY: UNITED STATES SENATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Jack Reed, U.S. Senator	Multi-colored area rug. Rec'd—January 7, 2006. Est. Value—$1,500. Disposition—Displayed in SH–728 for Official Use.	His Excellency Ahmed Zia Masood, First Vice President of the Islamic Republic of Afghanistan.	Non-acceptance would cause donor embarrassment.
Jack Reed, U.S. Senator	Uncut stone of lapis lazuli, in a velvet box. Rec'd—December 12, 2006. Est. Value—Unknown. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	General Abdul Rahim Wardak, Minister of Defense of the Islamic Republic of Afghanistan.	Non-acceptance would cause donor embarrassment.
Charles Schumer, U.S. Senator	Metal "cooking vessel" replica. Rec'd—March 22, 2006. Est. Value—$250. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	Governor Zhou Xiaochuan, Peoples Bank of China.	Non-acceptance would cause donor embarrassment.
Charles Schumer, U.S. Senator	Book of commemorative coins. Rec'd—March 23, 2006. Est. Value—$300. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Bo Xi Lai, Minister of Commerce of the People's Republic of China.	Non-acceptance would cause donor embarrassment.
Jeff Sessions, U.S. Senator	Chess Set w/ standard carved chess pieces. Rec'd—October 2, 2006. Est. Value—$160. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Jalal Talabani, President of the Republic of Iraq.	Non-acceptance would cause donor embarrassment.
Ted Stevens, U.S. Senator	Metal cup holder set with stone base, cups and stone carved grape cluster. Rec'd—August 27, 2006. Est. Value—$125. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Sergey Borisovich Ivanov, Minister of Defense of the Russian Federation.	Non-acceptance would cause donor embarrassment.
John Warner, U.S. Senator	Silver Tray. Rec'd—March 23, 2006. Est. Value—$100. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	Secretary General of the National Security Council of Turkey.	Non-acceptance would cause donor embarrassment.
John Warner, U.S. Senator	Decorative Blue Bowl. Est. Rec'd—November 14, 2006. Value—Over $100. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	General Abdul Rahim Wardack, Minister of Defense of the Islamic Republic of Afghanistan.	Non-acceptance would cause donor embarrassment.
John Warner, U.S. Senator	Blue Lapis Box. Rec'd—March 2006. Est. Value—$750. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause donor embarrassment.
John Warner, U.S. Senator	Silver Decorative Container. Rec'd—March 9, 2006. Est. Value—$200. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Mohammed Hussein Tantawy, Minister of Defense of the Arab Republic of Egypt.	Non-acceptance would cause donor embarrassment.

AGENCY: UNITED STATES SENATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
John Warner, U.S. Senator	Wooden Chess Set. Rec'd—October 2, 2006. Est. Value—$160. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Jalal Talabani, President of the Republic of Iraq.	Non-acceptance would cause donor embarrassment.
Brandi White, Deputy Chief Counsel, Office of Senator Bill Frist.	Metal box with Pakistani flag emblem on top, in green velvet case. Rec'd—January 24, 2006. Est. Value—Over $100. Disposition—With the Secretary of the Senate, Pending Transfer to the General Services Administration.	His Excellency Shaukat Aziz, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause donor embarrassment.

AGENCY: UNITED STATES SENATE

[Report of Travel]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift description	Identity of foreign donor and government	Circumstances justifying acceptance
MaiNhia Khang, Constituent/Policy Liaison, Office of Senator Norm Coleman.	Food and lodging at Conference Center. Rec'd—December 2–9, 2006.	Government of Norway, Sweden, Finland.	Official travel to discuss U.S.–Nordic relations.
Richard Lugar, U.S. Senator	Transportation within Georgia via helicopter to military installation to visit troops in training with President Saakashvilli and conventional weapons storage site to view weapons in need of elimination. Rec'd—August 22 and 23, 2006.	Government of Georgia	Official travel to view military installations. No commercial transportation was available.
Elizabeth McDonnell, Legislative Assistant Office of Senator Gordon H. Smith.	Transportation within Thailand, including lodging and meals rec'd—January 5–11, 2006.	Government of the Kingdom of Thailand.	Fact-finding travel to view tsunami recovery, meet w/ U.S. and Thai trade negotiators, and discuss current geopolitical issues.
Kenneth Myers III, Sr. Professional Staff Member Committee on Foreign Relations.	Transportation within Georgia via helicopter to military installation to visit troops in training with President Saakashvilli and conventional weapons storage site to view weapons in need of elimination. Rec'd—August 22 and 23, 2006.	Government of Georgia	Official travel to view military installations. No commercial transportation was available.
Kenneth Myers, Jr., Chief of Staff Committee on Foreign Relations.	Transportation within Georgia via helicopter to military installation to visit troops in training with President Saakashvilli and conventional weapons storage site to view weapons in need of elimination.Rec'd—August 22 and 23, 2006.	Government of Georgia	Official travel to view military installations. No commercial transportation was available.
Clarine Nardi Riddle, Chief of Staff, Office of Senator Joseph I. Lieberman.	Transportation within Thailand via commercial air service, rental cars, fuel, tolls, lodging, and meals. Rec'd—January 5–11, 2006.	Ministry of Foreign Affairs of the Kingdom of Thailand.	Official travel to view devastation of tsunami and observance of the US-Thai Free Trade Agreement negotiations and cultural exchange.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
J. Dennis Hastert Member of Congress.	Afghan handmade wool rug approximately 4 x 6 flower pattern red and beige. Rec'd—September 26, 2006. Est. Value—$500. Disposition—Pending Transfer to General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
J. Dennis Hastert Member of Congress.	Peter Gorring marquetry wooden box. Rec'd—July 2005. Reported—2007.Est. Value—$400. Disposition—Pending Transfer to General Services Administration.	The Honorable John Howard, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
J. Dennis Hastert Member of Congress.	Bronze Sculpture of fox, 8″ tall, unsigned. Rec'd—September 18, 2005. Reported—2007. Est. Value—$325. Location—Approved for Official Use and on display in H–153 of the Capitol.	Lucien Weiler, President of Parliament Luxembourg.	Non-acceptance would cause embarrassment to donor and U.S. Government.
J. Dennis Hastert Member of Congress.	Royal De Champagne Crystal Lion. Rec'd—December 15, 2004. Reported—2007. Est. Value—$675. Location—Approved for Official Use and on display in the Speaker's Office, Room H 232 of The U. S. Capitol.	Lucien Weiler, President of Parliament Luxembourg.	Non-acceptance would cause embarrassment to donor and U.S. Government.
J. Dennis Hastert Member of Congress.	Painting, oil on canvas, circa 2000 20 x 90 cm signed Ja Koubemb, Kerastian "N.Berys" (mountain scene). Rec'd—September 24, 2002. Reported—2007. Est. Value—$300. Disposition—Pending Transfer to General Services Administration.	His Excellency Askar Akaev, President of Kyrgyzstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
J. Dennis Hastert Member of Congress.	Egyptian all silk rug, approximately 2 x 4; handmade fine "bird on branch" pattern silk fringe. Rec'd—June 27, 2002. Reported—2007.Est. Value—$450. Disposition—Approved for Official Use and on display in the Speaker's Office, Room H 232 of The U. S. Capitol.	Hussein Tantawy, Commander in Chief of the Armed Forces Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
J. Dennis Hastert Member of Congress.	Clock: Russian lacquer hanging wall clock. Rec'd—May 6, 2002. Reported—2007. Est. Value—$450. Disposition—Pending Transfer to General Services Administration.	Gennady N. Seleznev, Chairman of the State Duma Russia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
J. Dennis Hastert Member of Congress.	12 Silver coins in wooden box, pure silver, 1 oz each. Rec'd—March 2002. Reported—2007. Est. Value—$350. Disposition—Pending Transfer to General Services Administration.	His Excellency Islam A. Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
J. Dennis Hastert Member of Congress.	Afghani handmade all wool rug, new, long all wool natural fringe; Tribal pattern with reds and dark blue; approximately 4 x 6. Rec'd—February 10, 2002. Reported—2007. Est. Value—$900. Disposition—Pending Transfer to General Services Administration.	His Excellency Hamid Karzai, Chairman of the Transitional Administration of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
J. Dennis Hastert Member of Congress.	Sheathed dagger, with precious metals and gems. Rec'd—June 21, 2000. Reported—2007. Est. Value—$10,000. Disposition—Pending Transfer to General Services Administration.	His Majesty Mohammed VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
J. Dennis Hastert Member of Congress.	Silver lamp, 19″ open work electrified oil lamp with open work shade. Rec'd—January 5, 2000. Reported—2007. Est. Value—$300. Disposition—Pending Transfer to General Services Administration.	Field Marshall Mohamed H. Tantawi of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
J. Dennis Hastert, Member of Congress.	Female bronze head of the Benin people, height approx. 19″. Rec'd—October 29, 1999. Reported—2007. Est. Value—$300. Disposition—Pending Transfer to General Services Administration.	His Excellency Olesegun Lbasario, President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
J. Dennis Hastert, Member of Congress.	USAK Turkish wool rug. Rec'd—September 29, 1999. Reported—2007. Est. Value—$300. Location—Approved for Official Use and on display in the Speaker's Office, Room H 232 of The U.S. Capitol.	His Excellency Bulent Ecevit, Prime Minister of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
J. Dennis Hastert, Member of Congress.	4 Sterling Silver Napkin Rings. Rec'd—March 1999. Reported—2007. Est. Value—$450. Disposition—Pending Transfer to General Services Administration.	His Excellency Bertie Ahern, TD, Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government

AGENCY: UNITED STATES HOUSE OF REPRESENTATIVES

[Report of travel]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift description	Identity of foreign donor and government	Circumstances justifying acceptance
Peter Hoekstra, Member of Congress.	Air travel: Canberra-Alice Springs; Alice Springs-Sydney. Rec'd—February 22, 2006 through February 23, 2006.	Government of Australia	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Mark Steven Kirk, Member of Congress.	Ground transportation: Beijing; Gansu; Shanghai. Air travel: Beijing-Lanzhou; Lanzhou-Jiayuguan (round trip); Lanzhou-Shanghai. Rec'd—January 9, 2006 through January 15, 2006.	People's Republic of China	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Rick Larsen, Member of Congress	Ground transportation: Beijing; Gansu; Shanghai. Air travel: Beijing-Lanzhou; Lanzhou-Jiayuguan (round trip); Lanzhou-Shanghai. Rec'd—January 9, 2006 through January 15, 2006.	People's Republic of China	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Tom Feeney, Member of Congress	Ground transportation: Beijing; Gansu; Shanghai. Air travel: Beijing-Lanzhou; Lanzhou-Jiayuguan (round trip); Lanzhou-Shanghai. Rec'd—January 9, 2006 through January 15, 2006.	People's Republic of China	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Jan Schakowsky, Member of Congress.	$60 reimbursement for travel expenses. Rec'd—November 30, 2006.	United Nations	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).

AGENCY: UNITED STATES HOUSE OF REPRESENTATIVES—Continued

[Report of travel]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift description	Identity of foreign donor and government	Circumstances justifying acceptance
Christopher Donesa, Deputy Staff Director and Chief Counsel, Permanent Select Committee on Intelligence.	Air travel: Canberra-Alice Springs; Alice Springs-Sydney. Rec'd—February 22, 2006 through February 23, 2006.	Government of Australia	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Michael Paul Ennis, Professional Staff, House Permanent Committee on Intelligence.	Air travel: Canberra-Alice Springs; Alice Springs-Sydney. Rec'd—February 22, 2006 through February 23, 2006.	Government of Australia	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Richard Alister Goldberg, Legislative Assistant/Communications Advisor, Office of Representative Mark Steven Kirk.	Ground transportation: Beijing; Gansu; Shanghai. Air travel: Beijing-Lanzhou; Lanzhou-Jiayuguan (round trip); Lanzhou-Shanghai. Rec'd—January 9, 2006 through January 15, 2006.	People's Republic of China	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Kevin D. Kim, Office of Representative Gary Ackerman.	Group bus tours and transportation in and around Seoul, Korea (incl. trip to DMZ, Cheongn, etc.); lodging for 6 nights @ Hilton Hotel in Seoul; meals from 9/25/06—dinner through 10/01/06 breakfast; group trip to see "Nan-ta" the play; group trip to see Karaoke and bar (one time each). Rec'd—September 24, 2006 through October 2, 2006.	Republic of Korea	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Dennis King, Chief of Staff, Representative Lane Evans.	6 nights lodging, approximately 10 meals, and local ground transportation within Seoul and vicinity. Rec'd—January 22 through January 28, 2006.	Republic of Korea	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Lane Evans, Member of Congress	6 nights lodging, approximately 10 meals, and local ground transportation within Seoul and vicinity. Rec'd—January 22 through January 28, 2006.	Republic of Korea	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Luis Jimenez, Legislative Assistant, Representative Rahm Emanuel.	Meals, lodging, airport tax and hotel tax. Rec'd—January 4, 2006—January 12, 2006.	Government of Thailand	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Stephanie Lester, Professional Staff, House Ways and Means Trade Subcommittee.	In-country transportation, lodging, meals and incidentals. Rec'd—January 4 through January 12, 2006.	Government of Thailand	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Daniel MacLean, Legislative Assistant, Representative Wally Herger.	In-country travel, lodging, meals and other expenses. Rec'd—January 4 through January 12, 2006.	Government of Thailand	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Scott Palmer, Chief of Staff for Speaker Dennis Hastert.	Accommodations for G–8 Summit. Rec'd—September 15 through September 17, 2006.	Russian Federation	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
J. Dennis Hastert, Member of Congress.	Accommodations for G–8 Summit. Rec'd—September 15 through September 17, 2006.	Russian Federation	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Jamal D. Ware, Communications Director, Permanent Select Intelligence Committee.	Air travel: Canberra-Alice Springs; Alice Springs-Sydney. Rec'd—February 22, 2006 through February 23, 2006.	Government of Australia	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).

AGENCY: UNITED STATES HOUSE OF REPRESENTATIVES—Continued

[Report of travel]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift description	Identity of foreign donor and government	Circumstances justifying acceptance
Mary Elizabeth Woodworth, Assistant Parliamentarian.	3 nights lodging in Sydney, Australia; 9 nights of lodging in Canberra, Australia; sunset cruise of Sydney Harbor; food and beverages at a number of official social functions; two-way travel between the hotel and the Australian Parliament House for our educational sessions each day; two-way travel between the city of Canberra and the city of Sydney during our three-day study trip to Sydney; transportation between hotel in Sydney and the New South Wales Parliament House in downtown Sydney. Rec'd—November 19, 2006 through December 1, 2006.	Government of Australia	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).

AGENCY: DEPARTMENT OF THE ARMY

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Thurman, Major General of the U.S. Army.	SKS Rifle. Rec'd—July 14, 2006. Est. Value—$120. Location—Retained at the organization for Official Use.	Abdul Qadir, Lieutenant General and Commander of the Army of the Republic of Iraq.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Martin E. Dempsey, Lieutenant General of the U.S. Army.	Persian Silk Rug. Rec'd—May 25, 2006. Est. Value—$5,000. Disposition—Transferred to General Services Administration.	Nechirvan Barzani, Prime Minister of the Kurdistan Regional Government.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Joseph F. Peterson, Major General of the U.S. Army.	Persian Silk Rug. Rec'd—May 25, 2006. Est. Value—$5,000. Disposition—Transferred to General Services Administration.	Nechirvan Barzani, Prime Minister of the Kurdistan Regional Government.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James M. Dubik, Lieutenant General of the U.S. Army.	Japanese Print. Rec'd—March 28, 2006. Est. Value—$1,000. Location—Retained at the organization for Official Use.	General of the Army of Japan	Non-acceptance would have caused embarrassment to donor and U.S. Government.
John Adams, Brigadier General of the U.S. Army.	M1A1 Thompson .45 Caliber Submachine Gun. Rec'd—March 2, 2006. Est. Value—$720. Location—Retained at the organization for Official Use.	Mr. Josip Lucic, Chief of Staff of the Air Force of the Republic of Croatia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Peter J. Schoomaker, General of the U.S. Army.	Bukara Style Rug. Rec'd—January 26, 2006. Est. Value—1,200. Location—Retained at the organization for Official Use.	Chief of Staff, of the National Army of the Islamic Republic of Afghanistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
John Vines, Lieutenant General of the U.S. Army.	Dragunov Sniper Rifle. Rec'd—January 17, 2006. Est. Value—$5,000. Location—Retained at the organization for Official Use.	Abdul Qadir, Lieutenant General and Commander of the Army of the Republic of Iraq.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Burwell B. Bell III, General of the U.S. Army.	Silver Platter. Rec'd—January 6, 2006. Est. Value—$695. Location—Retained at the organization for Official Use.	Gerhard Back, General of the Allied Joint Force Command, Northwood.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE ARMY—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Tginas R. Turner, Major General of the U.S. Army.	2 Silk Rugs and 1 Necklace. Rec'd—January 31, 2006. Est. Value—$4,420. Location—Retained at the organization for Official Use.	Division Commander of the 4th Iraqi Army.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Elizabeth Johnson, Captain of the U.S. Army.	Silk & Cotton Rug. Rec'd—January 3, 2006. Est. Value—$1,500. Disposition—Transferred to General Services Administration.	Mr. Nanaw Sherwan, Deputy Commander for the People's Union of Kurdistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
David Rodriguez, Major General of the U.S. Army.	Silk rug. Rec'd—January 3, 2006. Est. Value—$1,500. Disposition—Transferred to General Services Administration.	Mr. Nanaw Sherwan, Deputy Commander for the People's Union of Kurdistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
David Rodriguez, Major General of the U.S. Army.	Silk & Cotton Rug. Rec'd—January 3, 2006. Est. Value—$2,000. Disposition—Transferred to General Services Administration.	Mr. Nanaw Sherwan, Deputy Commander for the People's Union of Kurdistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Elizabeth Johnson, Captain of the U.S. Army.	21K Necklace, Ring & Earring Set. Rec'd—January 3, 2006. Est. Value—$2,067.30. Disposition—Transferred to General Services Administration.	Mr. Nanaw Sherwan, Deputy Commander for the People's Union of Kurdistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Kevin J. Bergner, Brigadier General of the U.S. Army.	Silk & Cotton Rug. Rec'd—December 27, 2005. Est. Value—$750. Disposition—Transferred to General Services Administration.	Mr. Nanaw Sherwan, Deputy Commander for the People's Union of Kurdistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Admiral M.G. Mullen, Chief Naval Officer.	4x6 Pakistani Rug. Rec'd—January 24, 2006. Est. Value—$100. Location—Being retained for Official Use at Chief Naval Officer's Office (DNS35).	Admiral M. Afzal Tahir, Chief of Staff of the Navy of the Islamic Republic of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Captain Thomas Parker, USS KITTY HAWK (CV 63).	Man's Watch. Rec'd—November 11, 2004. Reported—2007. Est. Value—$446. Disposition—Transferred to General Services Administration.	Mr. Ozawa, Local Dignitary of Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Captain Thomas Parker, USS KITTY HAWK (CV 63).	Woman's watch. Rec'd—November 11, 2004. Reported—2007. Est. Value—$446.. Disposition—Transferred to General Services Administration.	Mr. Ozawa, Local Dignitary of Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Mary Ulrich, spouse of Admiral. H.G. Ulrich III, Commander U.S. Naval Forces Europe.	Gold Bracelet. Rec'd—May 14, 2006. Est. Value—$1,360. Location—Being retained by COMNAVEUR for Official Use.	Mrs. Maria Chinofoti, Spouse of Chief of the Hellenic Republic National Defense, General Staff, Admiral Panagiotis Chinofotis, (Greece).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Mary Ulrich, spouse of Admiral H.G. Ulrich III, Commander U.S. Naval Forces Europe.	Gold Brooch. Rec'd—May 14, 2006. Est. Value—$1,464. Location—Being retained by COMNAVEUR for Official Use.	Mrs. Maria Chinofoti, spouse of the Chief of the Hellenic Republic National Defense General Staff, Admiral Panagiotis Chinofotis, (Greece).	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Admiral H.G. Ulrich III, Commander U.S. Naval Forces Europe.	Silver and Gold Fountain Pen. Rec'd—July 25, 2006. Est. Value—$850. Location—Being retained by COMNAVEUR for Official Use.	Mr. Alessandro De Francis, Prefect of Caseerta Province, Italian Republic.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Admiral H.G. Ulrich III Commander U.S. Naval Forces Europe.	Hungarian Sword and Porcelain Dish. Rec'd—November 3, 2005. Reported—2007. Est. Value—$715. Location—Being retained by COMNAVEUR for Official Use.	General Andras Havril, Chief of Defense of the Republic of Hungary.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Richard Greco, Assistant Secretary of the Navy (Financial Management and Comptroller).	Six (6) Italian silk neckties handmade by E. Marinella, Naples, Italy. Rec'd—April 10, 2006. Est. Value—$870. Disposition—Transferred to General Services Administration.	His Excellency Silvio Berlusconi, Prime Minister of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY

[Report of travel]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift description	Identity of foreign donor and government	Circumstances justifying acceptance
Admiral and Mrs. H.G. Ulrich III, Commander U.S. Naval Forces Europe and four accompanying staff members.	Expended for hotel and meals. Rec'd—May 12–15, 2006.	Admiral Panagiotis Chinofotis, Chief of the Hellenic Republic National Defense, General Staff, (Greece).	Official Trip
Captain David Grogan, Staff Judge Advocate of the Naval Network Warfare Command.	Expended for hotel, meals and Conference Fee. Rec'd—November 18–22, 2006.	Mark Cunliffe, Head Defense Legal, and Air Commodore S.J. Harvey, Director General of the Defense Force Legal Services of Australia.	Official Trip

AGENCY: DEPARTMENT OF THE AIR FORCE

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
John Jumper, General (Retired) Former Air Force Chief of Staff.	Longines Men's Watch, stainless steel, MDL L5–665–4–16–6. Rec'd—Unknown; Approximate Date 2005. Reported—August 10, 2007. Est. Value—$750. Disposition—Transferred to General Services Administration.	Lieutenant General Staff, Abdul Rahman Bin Fakad Al-Faisal, Commander of the Air Force of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
John Jumper, General (Retired) Former Air Force Chief of Staff.	Raymond Weil Men's Wrist Watch, stainless steel, Serial Number BE78626. Rec'd—February 27, 2005. Reported—August 10, 2007. Est. Value—$240. Disposition—Transferred to General Services Administration.	Major General Khalid, Air Chief, United Arab Emirates.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE AIR FORCE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ms. Ellen Jumper, Spouse of General John Jumper, (Retired) Former Air Force Chief of Staff.	Ladies 14kt yellow and white gold bracelet. Rec'd—February 27, 2005. Reported—August 10, 2007. Est. Value—$750. Disposition—Transferred to General Services Administration.	Major General Khalid, Air Chief, United Arab Emirates.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
T. Michael Moseley, General Air Force Vice Chief of Staff.	Longines Men's Watch, stainless steel, MDL L5–665–4–16–6. Rec'd—2005. Reported—August 10, 2007. Est. Value—$750. Disposition—Transferred to General Services Administration.	Lieutenant General Staff, Abdul Rahman Bin Fakad Al-Faisal, Commander of the Air Force of the Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
John F. Mulholland, General Chief, Office of Military Cooperation-Kuwait.	RADO Lorence Wrist Watch Model # R48755203. Rec'd—July 17, 2005. Reported—August 10, 2007. Est. Value—$445. Disposition—Transferred to General Services Administration.	Lieutenant General Fahad Al-Amir, Chief of Staff, Armed Forces of the State of Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
John F. Mulholland, General Chief, Office of Military Cooperation-Kuwait.	Immersion Stendardo Diver's Wrist Watch. Rec'd—July 6, 2005. Reported—August 10, 2007. Est. Value—$629. Disposition—Transferred to General Services Administration.	Lieutenant General (Retired) Mohammed Al Badr, Chief, Security Decisions Follow-up Committee, State of Kuwait.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
John F. Mulholland, General Chief, Office of Military Cooperation-Kuwait.	Roamer Wrist Watch Serial # 517948. Rec'd—July 26, 2005. Reported—August 10, 2007. Est. Value—$323. Disposition—Transferred to General Services Administration.	His Excellency Maber Mubark Al-Hamad Al-Sabah, Deputy Prime Minister and Minister of Defense, State of Kuwait.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
Gary L. North, Lieutenant General, United States Central Command Air Forces, Commander.	Gentlemen's Tissot T-Touch Watch Silver Stainless Steel. Rec'd—March 28, 2006. Est. Value—$650. Disposition—Pending Transfer to General Services Administration.	Major General Hussein A. Al-Biss, Commander of the Royal Jordanian Air Force.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
Ms. Gary L. North, United States Central Command Air Forces, Commander.	Women's Gucci 8605 Series Watch Silver Stainless Steel. Rec'd—March 28, 2006. Est. Value—$950. Disposition—Pending Transfer to General Services Administration.	Spouse of Major General Hussein A. Al-Biss, Commander of the Royal Jordanian Air Force.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
Gary L. North, Lieutenant General, United States Central Command Air Forces, Commander.	Man's Tissot Chronograph T-Lord Watch Brown Leather band and silver/white face. Rec'd—March 8, 2006. Est. Value—$475. Disposition—Pending Transfer to General Services Administration.	His Royal Majesty Feisel IBN Al Hussein, Royal Jordanian Air Force.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
General Michael V. Hayden Director Central Intelligence Agency.	Rug: 4 feet 9 inches by 3 feet 3 inches, modern, navy blue ground with flowering vine field centering a pulled lobed medallion on red to beige ground. Rec'd—August 4, 2006. Est. Value—$500. Location—Official Use, obtained for official display in appropriate office space.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Michael V. Hayden Director Central Intelligence Agency.	Jewelry: 18 karat yellow gold and ruby four piece ensemble. Rec'd—August 8, 2006. Est. Value—$750. Disposition—Pending transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Michael V. Hayden Director Central Intelligence Agency.	Rifle: Muzzle loaded rifle together with a powder flask and ram rod in shadow-box frame. Rec'd—August 8, 2006. Est. Value—$750. Location—Being retained by General Michael V. Hayden for Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Michael V. Hayden Director Central Intelligence Agency.	Letter Opener: Jeweled silver letter opener with hooded hawk finial set with rubies. Rec'd—July 23, 2006. Est. Value—$500. Disposition—Pending transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Rug: 9 feet 8 inches by 6 feet 5 inches, modern, ivory ground with palmette and trellising vine field centering a pulled star medallion on light blue ground. Rec'd—June 20, 2006. Est. Value—$1,000 . Disposition—Pending transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Rug: Red ground with palmette and trellising vine field within a complimentary ground border on red ground. Rec'd—February 8, 2005. Reported—January 23, 2006. Est. Value—$750. Disposition—Pending transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Rug: 4 feet 10 inches by 3 feet 2 inches, modern, ivory ground with palmette and trellising vine field centering a pulled star medallion on grayish-blue ground, floral spray guard border on red ground. Rec'd—January 27, 2006. Est. Value—$500. Disposition—Pending transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Rug: 4 feet 10 inches by 3 feet 2 inches, modern, ivory ground with palmette and trellising vine field centering a pulled star medallion on grayish-blue ground, floral spray guard border on red ground. Rec'd—April 24, 2006. Est. Value—$500. Disposition—Pending transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Watch: Cased ladies stainless steel wristwatch. Rec'd—October 12, 2006. Est. Value—$500. Disposition—Pending transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Watch: Cased gentleman's stainless steel wristwatch. Rec'd—October 12, 2006. Est. Value—$500. Disposition—Pending transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Watch: Cased gentleman's stainless steel calendar chronometer wristwatch. Rec'd—January 1, 2006. Est. Value—$500. Disposition—Pending transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: NATIONAL TRANSPORTATION SAFETY BOARD

[Report of travel]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift description	Identity of foreign donor and government	Circumstances justifying acceptance
Dennis Jones, Chief of Regional Operations and General Aviation.	Round trip airfare for flight from Lagos, Nigeria to Abuja, Nigeria. Rec'd—November 12–18, 2006. Lodging in Lagos. Rec'd—November 12–18, 2006. Abuja was the origination point of the accident flight, which was the 10/29/06 crash of a Boeing 737–200 operated by Aviation Development Company. The NTSB participated in the investigation on behalf of the United States (U.S.). The NTSB Accident Investigation No. is WAS07RA004.	The Honorable Femi Fani-Kayode, Minister of Aviation of the Republic of Nigeria, on behalf of the Republic of Nigeria.	The NTSB, pursuant to the Annex 13 to the Convention on International Civil Aviation, serves as U.S. representative in international civil aviation accident investigations and, as such, provides technical assistance to the nation responsible for the investigation. The investigation of this 10/29/06 crash of an Aviation Development Company Boeing 737 in Lagos, in which 97 of the 105 passengers and crew were fatally injured, required investigative activities at the origination point of the flight. The Ministry of Aviation voluntarily provided for the lodging and travel, which was accepted pursuant to NTSB authority found in 49 U.S.C. 1113.

AGENCY: NATIONAL TRANSPORTATION SAFETY BOARD—Continued

[Report of travel]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift description	Identity of foreign donor and government	Circumstances justifying acceptance
Thomas Jacky, Aerospace Engineer (Aviation Systems).	Round trip airfare for flight from Lagos, Nigeria to Abuja, Nigeria. Rec'd—November 12–18, 2006. Lodging in Lagos. Rec'd—November 12–18, 2006. Abuja was the origination point of the accident flight, which was the 10/29/06 crash of a Boeing 737–200 operated by Aviation Development Company. The NTSB participated in the investigation on behalf of the United States (U.S.). The NTSB Accident Investigation No. is WAS07RA004.	The Honorable Femi Fani-Kayode, Minister of Aviation of the Republic of Nigeria, on behalf of the Republic of Nigeria.	The NTSB, pursuant to the Annex 13 to the Convention on International Civil Aviation, serves as U.S. representative in international civil aviation accident investigations and, as such, provides technical assistance to the nation responsible for the investigation. The investigation of this 10/29/06 crash of an Aviation Development Company Boeing 737 in Lagos, in which 97 of the 105 passengers and crew were fatally injured, required investigative activities at the origination point of the flight. The Ministry of Aviation voluntarily provided for the lodging and travel, which was accepted pursuant to NTSB authority found in 49 U.S.C. 1113.
William English, Senior Air Safety Investigator (Major Investigations).	Round trip flight from Brasilia to Cachimba Air Base on Embraer owned business jet. Rec'd—October 6, 2006. Round trip flight from Brasilia to Cachimba Air Base on Gol Airlines charter business jet. Rec'd—October 9, 2006. Round trip flight via Brazilian Air Force aircraft from Cachimba Air Base to accident site in jungle. Rec'd—October 9, 2006 Flights in Brazil from Brasilia to the accident site in the Brazilian Amazon jungle to investigate the 9/29/06 mid-air collision of a Gol Airlines Boeing 737–800 and an Embraer business jet operated by Excelaire of Long Island, NY. All 154 passengers and crew of the Boeing 737 were fatally injured, but the 2 crew and 5 passengers on the Excelaire Embrarer business jet were not injured. The National Transportation Safety Board Accident Investigation No. is DCA06RA076A/B.	The Department of Civil Aviation of the Federal Republic of Brazil.	The NTSB, pursuant to the Annex 13 to the Convention on International Civil Aviation, serves as U.S. representative in international civil aviation accident investigations and, as such, provides technical assistance to the nation responsible for the investigation. The investigation of this 9/29/06 mid-air collision between the Gol Airlines Boeing 737 and the Excelaire Embrarer business jet over the Brazilian Amazon jungle required coordinated, on-scene investigative activities in support of the Department of Civil Aviation of the Republic of Brazil. The coordinated, on-scene investigative activities in support of the Department of Civil Aviation of the Republic of Brazil. The Department of Civil Aviation voluntarily arranged and provided for the travel required for NTSB investigators. The travel was accepted pursuant to NTSB authority found in 49 U.S.C. 1113.

AGENCY: NATIONAL TRANSPORTATION SAFETY BOARD—Continued

[Report of travel]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift description	Identity of foreign donor and government	Circumstances justifying acceptance
Scott Warren, Lead Aerospace Engineer (Aviation Systems).	Round trip flight from Brasilia to Cachimba Air Base on Embraer owned business jet. Rec'd—October 6, 2006. Round trip flight from Brasilia to Cachimba Air Base on Gol Airlines charter business jet. Rec'd—October 9, 2006. Round trip flight via Brazilian Air Force aircraft from Cachimba Air Base to accident site in jungle. Rec'd—October 9, 2006. Flights in Brazil from Brasilia to the accident site in the Brazilian Amazon jungle to investigate the 9/29/06 mid-air collision of a Gol Airlines Boeing 737–800 and an Embraer business jet operated by Excelaire of Long Island, NY. All 154 passengers and crew of the Boeing 737 were fatally injured, but the 2 crew and 5 passengers on the Excelaire Embrarer business jet were not injured. The NTSB Accident Investigation No. is DCA06RA076A/B.	The Department of Civil Aviation of the Federal Republic of Brazil.	The NTSB, pursuant to the Annex 13 to the Convention on International Civil Aviation, serves as U.S. representative in international civil aviation accident investigations and, as such, provides technical assistance to the nation responsible for the investigation. The investigation of this 9/29/06 mid-air collision between the Gol Airlines Boeing 737 and the Excelaire Embrarer business jet over the Brazilian Amazon jungle required coordinated, on-scene investigative activities in support of the Department of Civil Aviation of the Republic of Brazil. The Department of Civil Aviation voluntarily arranged and provided for the travel required for NTSB investigators. The travel was accepted pursuant to NTSB authority found in 49 U.S.C. 1113.

AGENCY: APPALACHIAN REGIONAL COMMISSION

[Report of travel]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift description	Identity of foreign donor and government	Circumstances justifying acceptance
Akofa Bonsi, Truman Fellow, Office of the Federal Co-Chair.	Airfare to United Arab Emirates. Rec'd—February 1–11, 2006. Lodging within United Arab Emirates. Rec'd—February 1–11, 2006. Meals within United Arab Emirates. Rec'd—February 1–11, 2006.	Sheikh Sultan bin Zayed al Nahyan, Deputy Prime Minister of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: GOVERNMENT OF DISTRICT OF COLUMBIA, EXECUTIVE OFFICE

[Report of travel]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift description	Identity of foreign donor and government	Circumstances justifying acceptance
Mr. Anthony A. Williams, Mayor of the District of Columbia.	Travel, hotel accommodation, food, and on-ground transportation. Rec'd—March 13, 2006.	Mayor Lee, Seoul, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Anthony A. Williams, Mayor of the District of Columbia.	Travel, hotel accommodations, food, and on-ground transport in Seoul, Korea. Rec'd—June 7–11, 2006.	Mayor Lee, Seoul, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Julie Sooyhun Koo, Deputy Director of the Asian and Pacific Islander Commission.	Travel, hotel accommodations, food, and on-ground transport in Seoul, Korea. Rec'd—June 7–11, 2006.	Mayor Lee, Seoul, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: GOVERNMENT OF DISTRICT OF COLUMBIA, EXECUTIVE OFFICE—Continued

[Report of travel]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift description	Identity of foreign donor and government	Circumstances justifying acceptance
Mr. Anthony A. Williams, Mayor of the District of Columbia.	Travel from Washington to London & London to Istanbul, Turkey. Rec'd—June 28–30, 2006. Hotel Accommodations. Rec'd—June 28–30, 2006. Meals in London. Rec'd—June 28–30, 2006.	Central Government of London, United Kingdom.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Anthony A. Williams, Mayor of the District of Columbia.	Transportation from Ankara, Turkey to Paris, France. Rec'd—July 3–5, 2006. Hotel accommodations & food for two nights. Rec'd—July 3–5, 2006. Ground transportation. Rec'd—July 3–5, 2006.	Mayor Delanoe, of Paris, the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

[FR Doc. E7–23674 Filed 12–6–07; 8:45 am]

BILLING CODE 4710–20–P

Federal Register

Friday,
December 7, 2007

Part IV

Environmental Protection Agency

40 CFR Parts 9 and 94

Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 94

[EPA–HQ–OAR–2007–0121; FRL–8502–5]

RIN 2060–AO38

Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: EPA is issuing this Advance Notice of Proposed Rulemaking (ANPRM) to invite comment from all interested parties on our plan to propose new emission standards and other related provisions for new compression-ignition marine engines with per cylinder displacement at or above 30 liters per cylinder. We refer to these engines as Category 3 marine engines. We are considering standards for achieving large reductions in oxides of nitrogen (NO_X) and particulate matter (PM) through the use of technologies such as in-cylinder controls, aftertreatment, and low sulfur fuel, starting as early as 2011.

Category 3 marine engines are important contributors to our nation's air pollution today and these engines are projected to continue generating large amounts of NO_X, PM, and sulfur oxides (SO_X) that contribute to nonattainment of the National Ambient Air Quality Standards (NAAQS) for $PM_{2.5}$ and ozone across the United States. Ozone and $PM_{2.5}$ are associated with serious public health problems including premature mortality, aggravation of respiratory and cardiovascular disease, aggravation of existing asthma, acute respiratory symptoms, chronic bronchitis, and decreased lung function. Category 3 marine engines are of concern as a source of diesel exhaust, which has been classified by EPA as a likely human carcinogen. A program such as the one under consideration would significantly reduce the contribution of Category 3 marine engines to national inventories of NO_X, PM, and SO_X, as well as air toxics, and would reduce public exposure to those pollutants.

DATES: Comments must be received on or before March 6, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0121, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov*
- *Fax:* (202) 566–9744
- *Mail:* Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460. Please include two copies.
- *Hand Delivery:* EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, EPA West Building, 1301 Constitution Avenue, NW., Room: 3334 Mail Code: 2822T, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0121. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT:
Michael Samulski, Assessment and Standards Division, Office of Transportation and Air Quality, 2000 Traverwood Drive, Ann Arbor, MI, 48105; telephone number: (734) 214–4532; fax number: (734) 214–4050; e-mail address: *samulski.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action will affect companies that manufacture, sell, or import into the United States new marine compression-ignition engines for use on vessels flagged or registered in the United States; companies and persons that make vessels that will be flagged or registered in the United States and that use such engines; and the owners or operators of such U.S. vessels. Owners and operators of vessels flagged elsewhere may also be affected, to the extent they use U.S. shipyards or maintenance and repair facilities; see also Section VII.E regarding potential application of the standards to foreign vessels that enter U.S. ports. Finally, this action may also affect companies and persons that rebuild or maintain these engines. Affected categories and entities include the following:

Category	NAICS code [a]	Examples of potentially affected entities
Industry	333618	Manufacturers of new marine diesel engines.
Industry	336611	Manufacturers of marine vessels.
Industry	811310	Engine repair and maintenance.

Category	NAICS code[a]	Examples of potentially affected entities
Industry	483	Water transportation, freight and passenger.
Industry	324110	Petroleum Refineries.
Industry	422710, 422720	Petroleum Bulk Stations and Terminals; Petroleum and Petroleum Products Wholesalers.

[a] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Additional Information About This Rulemaking

The current emission standards for new compression-ignition marine engines with per cylinder displacement at or above 30 liters per cylinder were adopted in 2003 (see 68 FR 9746, February 28, 2003). This ANPRM relies in part on information that was obtained for that rule, which can be found in Public Docket EPA–HQ–OAR–2003–0045. This docket is incorporated into the docket for this action, EPA–HQ–OAR–2007–0121.

Table of Contents

I. Overview

In recent years, EPA has adopted major new programs designed to reduce emissions from diesel engines. When fully phased in, these new programs for highway [1] and land-based nonroad [2] diesel engines will lead to the elimination of over 90 percent of harmful regulated pollutants from these sources. The public health and welfare benefits of these actions are very significant, projected at over $70 billion and $83 billion for our highway and land-based nonroad diesel programs, respectively. In contrast, the corresponding cost of these programs will be a small fraction of this amount. We have estimated the annual cost at $4.2 billion and $2 billion, respectively in 2030. These programs are being implemented over the next decade.

We have also recently proposed a new emission control program for locomotives and marine diesel engines.[3] The proposed standards would address all types of diesel locomotives (line-haul, switch, and passenger rail) and all types of marine diesel engines below 30 liters per cylinder displacement (including propulsion engines used on vessels from recreational and small fishing boats to super-yachts, tugs and Great Lakes freighters, and auxiliary engines ranging from small generator sets to large generators on ocean-going

[1] 66 FR 5001, January 18, 2001.

[2] 69 FR 38957, June 29, 2004.

[3] 72 FR 15937, April 3, 2007.

vessels).[4] The proposal consists of a three-part program. First, we are proposing more stringent standards for existing locomotives that would apply when they are remanufactured; we are also requesting comment on a program that would apply a similar requirement to existing marine diesel engines up to 30 liters per cylinder displacement when they are remanufactured. Second, we are proposing a set of near-term emission standards, referred to as Tier 3, for newly-built locomotives and marine engines up to 30 liters per cylinder displacement that reflect the application of in-cylinder technologies to reduce engine-out NO_X and PM. Third, we are proposing longer-term standards for locomotive engines and certain marine diesel engines, referred to as Tier 4 standards, that reflect the application of high-efficiency catalytic aftertreatment technology enabled by the availability of ultra-low sulfur diesel (ULSD) fuel.

Marine diesel engines above 30 liters per cylinder, called Category 3 marine diesel engines, are significant contributors to our national mobile source emission inventory. Category 3 marine engines are predominantly used in ocean-going vessels (OGV). The contribution of these engines to national inventories is described in section VIII.A of this preamble. These inventories are expected to grow significantly due to expected increases in foreign trade. Without new controls, we anticipate that their overall contribution to mobile source oxides of nitrogen (NO_X) and fine diesel particulate matter ($PM_{2.5}$) emissions will increase to about 34 and 45 percent respectively by 2030. Their contribution to emissions in port areas on a percentage basis would be expected to be significantly higher.

Reducing emissions from these engines can lead to improvements in public health and would help states and localities attain and maintain the PM and ozone national ambient air quality standards. Both ozone and $PM_{2.5}$ are associated with serious public health problems, including premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, lost work days, and restricted activity days), changes in lung function and increased respiratory symptoms, altered respiratory defense mechanisms, and chronic bronchitis. In addition, diesel exhaust is of special public health concern. Since 2002 EPA has classified diesel exhaust as likely to be carcinogenic to humans by inhalation at environmental exposures.[5] Recent studies are showing that populations living near large diesel emission sources such as major roadways,[6] rail yards, and marine ports[7] are likely to experience greater diesel exhaust exposure levels than the overall U.S. population, putting them at greater health risks. We are currently studying the size of the U.S. population living near a sample of approximately 50 marine ports and will place this information in the docket for this ANPRM upon completion.

Category 3 marine engines are currently subject to emission standards that rely on engine-based technologies to reduce emissions. These standards, which were adopted in 2003 and went into effect in 2004, are equivalent to the NO_X limits in Annex VI to the MARPOL Convention, adopted by a Conference of the Parties to the Convention in 1997. The opportunity to gain large additional public health benefits through the application of advanced emission control technologies, including aftertreatment, lead us to consider more stringent standards for these engines. In order to achieve these emission reductions on the ship, however, it may be necessary to control the sulfur content of the fuel used in these engines. Finally, because of the international nature of ocean-going marine transportation, and the very large inventory contribution from foreign-flagged vessels, we may also consider the applicability of federal standards to foreign vessels that enter U.S. ports (see Section VII.E).

In this ANPRM, we describe the emission program we are considering for Category 3 marine diesel engines and technologies we believe can be used to achieve those standards. The remainder of this section provides background on our current emission control program and gives an overview of the program we are considering. Section II provides a brief discussion of the health and human impacts of emissions from Category 3 marine diesel engines. Section III identifies relevant Clean Air Act provisions and Section IV summarizes our interactions with the International Maritime Organization (IMO). In Sections V and VI, we describe the potential emission limits and the emission control technologies that can be used to meet them. Section VII discusses several compliance issues. In Section VIII, we summarize the contribution of these engines to current mobile source NO_X and PM inventories in the United States and describe our plans for our future cost analysis. Finally, Section IX contains information on statutory and executive order reviews covering this action. We are interested in comments covering all aspects of this ANPRM.

A. Background: EPA's Current Category 3 Standards

EPA currently has emission standards for Category 3 marine diesel engines. The standards, adopted in 2003, are equivalent to the MARPOL Annex VI NO_X limits. They apply to any Category 3 engine installed on a vessel flagged or registered in the United States, beginning in 2004.

In our 2003 final rule, we considered adopting standards that would achieve greater emission reductions through expanding the use and optimization of in-cylinder controls as well as through the use of advanced emission control technologies including water technologies (water injection, emulsification, humidification) and selective catalytic reduction (SCR). However, we determined that it was appropriate to defer a final decision on the longer-term Tier 2 standards to a future rulemaking. While there was a certain amount of information available at the time about the advanced technologies, there were several outstanding technical issues concerning the widespread commercial use of those technologies. Deferring the Tier 2 standards to a second rulemaking allowed us the opportunity to obtain important additional information on the use of these advanced technologies that we expected to become available over the next few years. This new information was expected to include: (1) New developments as manufacturers continue to make various improvements to the technology and address any remaining concerns, (2) data or experience from recently initiated in-use installations using the advanced technologies, and (3) information from

[4] Marine diesel engines at or above 30 l/cyl displacement are not included in this program.

[5] U.S. EPA (2002) Health Assessment Document for Diesel Engine Exhaust. EPA/600/8–90/057F. Office of Research and Development, Washington DC. This document is available electronically at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060*. This document is available in Docket EPA–HQ–OAR–2007–0121.

[6] Kinnee, E.J.; Touman, J.S.; Mason, R.; Thurman, J.; Beidler, A.; Bailey, C.; Cook, R. (2004) Allocation of onroad mobile emissions to road segments for air toxics modeling in an urban area. Transport. Res. Part D 9: 139–150.

[7] State of California Air Resources Board. Roseville Rail Yard Study. Stationary Source Division, October 14, 2004. This document is available electronically at: *http://www.arb.ca.gov/diesel/documents/rrstudy.htm* and State of California Air Resources Board. Diesel Particulate Matter Exposure Assessment Study for the Ports of Los Angeles and Long Beach, April 2006. This document is available electronically at: *http://www.arb.ca.gov/regact/marine2005/portstudy0406.pdf*. This document is available in Docket EPA–HQ–OAR–2007–0121.

longer-term in-use experience with the advanced technologies that would be helpful for evaluating the long-term durability of emission controls. An additional reason to defer the adoption of long-term standards for Category 3 engines was to allow the United States to pursue further negotiations in the international arena to achieve more stringent global emission standards for marine diesel engines.[8]

Finally, because the standards adopted in our 2003 rulemaking were equivalent to the international standards, we determined that it was appropriate to defer a decision on the application of federal standards to engines on foreign-flagged vessels that enter U.S. ports. We indicated that we would consider this issue again in our future rulemaking, and we intend to evaluate how best to address emissions from foreign vessels in this action. We expect our proposal to reflect an approach similar to the emission program recently proposed by the United States in the current discussions at the IMO to amend the MARPOL Annex VI standards to a level that achieves significant reductions in NO_X, PM, and SO_X emissions from Category 3 marine diesel engines.[9] We will evaluate progress at the IMO and, as appropriate, consider the application of new EPA national standards to engines on foreign-flagged vessels that enter U.S. ports under our Clean Air Act authority.

B. Program Under Consideration

As described in Section VI, continuing advancements in diesel engine control technology support the adoption of long-term technology-forcing standards for Category 3 engines. With regard to NO_X control, SCR has been applied to many land-based applications, and the technology continues to be refined and improved. More propulsion engines have been fitted with the technology, especially on vessels operating in the Baltic Sea, and it is being found to be very effective and durable in-use. These improvements, in addition to better optimization of engine-based controls, have the potential for significant NO_X reductions. PM and SO_X emissions from Category 3 engines are primarily due to the sulfur content of the fuel they use. In the short term, these emissions can be decreased by using fuel with a reduced sulfur content or through the use of exhaust gas cleaning technology; this is the idea behind the SO_X Emission Control Areas (SECAs) provided for in Annex VI. More significant reductions can be obtained by using distillate fuel, and at least one company has been voluntarily switching from residual fuel to distillate fuel while their ships are operating within 24 nautical miles of certain California ports.[10] Their experience demonstrates that this type of fuel switching can be done safely and efficiently, although the higher price of distillate fuel may limit this approach to near-coast and port areas. In addition, emission scrubbing techniques are improving, which have the potential for significant PM reductions from Category 3 engines.

We are currently considering an emission control program for new Category 3 marine diesel engines that takes advantage of these new emission reduction approaches. The program we are considering, described in more detail in Section V, would focus on NO_X, PM, and SO_X control from new and existing engines. This program is similar to the one recently proposed at the IMO by the U.S. government.

For NO_X control for new engines, we are considering a two-phase approach. In the first phase, called Tier 2, we are considering a NO_X emission limit for new engines that would be 15 to 25 percent below the current NO_X limits as defined by the NO_X curve in the current Tier 1 standards. These standards would apply at all times. In the second phase, called Tier 3, we are considering a NO_X emission limit that would achieve an additional 80 percent reduction from the Tier 2 limits. We are considering the Tier 2 limits as early as 2011 and Tier 3 limits in the 2016 time frame. Because Tier 3 standards are likely to be achieved using aftertreatment technologies, the application of the standards could be geographically-based thereby allowing operators to turn the system off while they are outside of a specified geographic area. That area could be the same as the compliance area for PM and SO_X reductions (see below). This two-part approach would permit near-term emission reductions while achieving deeper reductions through long-term standards.

We believe a two-phase approach under consideration is an effective way to maximize NO_X emission reductions from these engines. While we continue to believe that the focus of the emission control program should be on meaningful long-term standards that would apply high-efficiency catalytic aftertreatment to these engines, short-term emission reductions could be achieved through incremental improvements to existing engine designs. These design improvements can be consistent with a long-term, after treatment-based Tier 3 program. The recent experience of engine manufacturers in applying advanced control technologies to other mobile sources suggests that incremental changes of the type that would be used to achieve the Tier 2 standards may also be used in strategies to achieve the Tier 3 standards. For example, Tier 2 technologies may allow engine manufacturers to size their aftertreatment control systems smaller. A more stringent Tier 2 control program, however, may risk diverting resources away from Tier 3 and may result in the application of emission reduction strategies that are not consistent with high-efficiency catalytic aftertreatment-based controls.

For PM and SO_X control, we are considering a performance standard that would reflect the use of low-sulfur distillate fuels or the use of exhaust gas cleaning technology (e.g., scrubbers), or a combination of both. These standards would apply as early as 2011 and would potentially achieve SO_X reductions as high as 95 percent and substantial PM reductions as well. We believe a performance standard would be a cost-effective approach for PM emission reductions since it allows ship owners to choose from a variety of mechanisms to achieve the standard, including fuel switching or the use of emission scrubbers. Compliance with the PM and SO_X emissions could be limited to operation in a defined geographical area. For example, ships operating in the defined coastal areas (i.e., within a specified distance from shore) would be required to meet the requirements while operating within the area, but could ''turn off'' the control mechanism while on the open sea. This type of performance standard could apply to all vessels, new or existing, that operate within the designated area. An important advantage of a geographic approach for PM and SO_X control, as well as the Tier 3 standards, is that it would result in emission reductions that are important for health and human welfare while reducing the costs of the program since ships will not be required to comply with the limits while they are operating across large areas of the open sea.

[8] 68 FR 9748, February 28, 2003.

[9] ''Revision of the MARPOL Annex VI, the NO_X Technical Code and Related Guidelines; Development of Standards for NO_X, PM, and SO_X,'' submitted by the United States, BLG 11/5, Sub-Committee on Bulk Liquids and Gases, 11th Session, Agenda Item 5, February 9, 2007, Docket ID EPA–HQ–OAR–2007–0121–0034. This document is also available on our Web site: *http://www.epa.gov/otaq/oceanvessels.com.*

[10] See ''Maersk Line Announces Fuel Switch for Vessels Calling California'' at *http://www.maerskline.com/globalfile/?path=/pdf/environment_fuel_initiative*.

We are also considering NO_X emission controls for existing Category 3 engines that would begin in 2012. There are at least two approaches that could be used for setting NO_X emission limits for existing engines. The first would be to set a performance standard, for example a reduction of about 20 percent from the Tier 1 NO_X limits; how this reduction is achieved would be left up to the ship owner. Alternatively, the second approach would be to express the requirement as a specified action, for example an injector change known to achieve a particular reduction; this approach would simplify verification, but the emission reduction results may vary across engines. We will be exploring both of these alternative approaches and seek comment on the relative merits of each.

II. Why Is EPA Considering New Controls?

Category 3 marine engines subject to today's ANPRM generate significant emissions of fine particulate matter ($PM_{2.5}$), nitrogen oxides (NO_X) and sulfur oxides (SO_X) that contribute to nonattainment of the National Ambient Air Quality Standards for $PM_{2.5}$ and ozone. NO_X is a key precursor to ozone and secondary PM formation while SO_X is a significant contributor to ambient $PM_{2.5}$. These engines also emit volatile organic compounds (VOCs), carbon monoxide (CO), and hazardous air pollutants or air toxics, which are associated with adverse health effects. Diesel exhaust is of special public health concern, and since 2002 EPA has classified it as likely to be carcinogenic to humans by inhalation at environmental exposures. In addition, emissions from these engines also cause harm to public welfare, contributing to visibility impairment, and other detrimental environmental impacts across the U.S.

A. Ozone and PM Attainment

Many of our nation's most serious ozone and $PM_{2.5}$ nonattainment areas are located along our coastlines where vessels using Category 3 marine engine emissions contribute to air pollution in or near urban areas where significant numbers of people are exposed to these emissions. The contribution of these engines to air pollution is substantial and is expected to grow in the future. Currently more than 40 major U.S. ports [11] along our Atlantic, Great Lakes, Gulf of Mexico, and Pacific coast lines are located in nonattainment areas for ozone and/or $PM_{2.5}$ (See Figure II–1).

The health and environmental effects associated with these emissions are a classic example of a negative externality (an activity that imposes uncompensated costs on others). With a negative externality, an activity's social cost (the cost borne by society imposed as a result of the activity taking place) exceeds its private cost (the cost to those directly engaged in the activity). In this case, emissions from Category 3 marine engines impose public health and environmental costs on society. However, these added costs to society are not reflected in the costs of those using these engines and equipment. The market system itself cannot correct this negative externality because firms in the market are rewarded for minimizing their operating costs, including the costs of pollution control. In addition, firms that may take steps to use equipment that reduces air pollution may find themselves at a competitive economic disadvantage compared to firms that do not. The emission standards that EPA is considering for Category 3 marine diesel engines would help address this market failure and reduce the negative externality from these emissions by providing a positive incentive for engine manufacturers to produce engines that emit fewer harmful pollutants and for vessel builders and owners to use those cleaner engines.

When considering vessel operations in the United States' Exclusive Economic Zone (EEZ), emissions from Category 3 marine engines account for a substantial portion of the United States' ambient $PM_{2.5}$ and NO_X mobile source emissions.[12] We estimate that annual emissions in 2007 from these engines totaled more than 870,000 tons of NO_X emissions and 66,000 tons of $PM_{2.5}$. This represents more than 8 percent of U.S. mobile source NO_X and 15 percent of U.S. mobile source $PM_{2.5}$ emissions. These numbers are projected to increase significantly through 2030 due to growth in the use of Category 3 marine engines to transport overseas goods to U.S. markets and U.S. produced goods overseas. Furthermore, their proportion of the emission inventory is projected to increase significantly as regulatory controls on other major emission categories take effect. By 2030, NO_X emissions from these ships are projected to more than double, growing to 2.1 million tons a year or 34 percent of U.S. mobile source NO_X emissions while $PM_{2.5}$ emissions are expected to almost triple to 170,000 tons annually comprising 45 percent of U.S. mobile source $PM_{2.5}$ emissions.[13] In 2007 annual emission of SO_X from Category 3 engines totaled almost 530,000 tons or more than half of mobile source SO_X and by 2030 these emissions are expected to increase to 1.3 million tons or 94 percent of mobile source emissions.

Both ozone and $PM_{2.5}$ are associated with serious public health problems, including premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, lost work days, and restricted activity days), increased respiratory symptoms, altered respiratory defense mechanisms, and chronic bronchitis. Diesel exhaust is of special public health concern, and since 2002 EPA has classified it as likely to be carcinogenic to humans by inhalation at environmental exposures.[14]

Recent studies are showing that populations living near large diesel emission sources such as major roadways [15], railyards, and marine ports [16] are likely to experience greater diesel exhaust exposure levels than the overall U.S. population, putting them at greater health risks. As part of our current locomotive and marine diesel engine rulemaking (72 FR 15938, April 3, 2007), we are studying the U.S. population living near a sample of 47 marine ports which are located along the entire east and west coasts of the U.S. as well as the Gulf of Mexico and the Great Lakes region. This information

[11] American Association of Port Authorities (AAPA), Industry Statistics, 2005 port rankings by cargo tonnage.

[12] In general, the United States Exclusive Economic Zone (EEZ) extends to 200 nautical miles from the U.S. coast. Exceptions include geographic regions near Canada, Mexico and the Bahamas where the EEZ extends less than 200 nautical miles from the U.S. coast. See map in Figure VIII–1, below.

[13] These projections are based on growth rates ranging from 1.7 to 5.0 percent per year, depending on the geographic region. The growth rates are described in Section VIII.A.

[14] U.S. EPA (2002) Health Assessment Document for Diesel Engine Exhaust. EPA/600/8–90/057F. Office of Research and Development, Washington DC. This document is available electronically at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060*. This document is available in Docket EPA–HQ–OAR–2007–0121.

[15] Kinnee, E.J.; Touman, J.S.; Mason, R.; Thurman,J.; Beidler, A.; Bailey, C.; Cook, R. (2004) Allocation of onroad mobile emissions to road segments for air toxics modeling in an urban area. Transport. Res. Part D 9: 139–150.

[16] State of California Air Resources Board. Roseville Rail Yard Study. Stationary Source Division, October 14, 2004. This document is available electronically at: *http://www.arb.ca.gov/diesel/documents/rrstudy.htm* and State of California Air Resources Board. Diesel Particulate Matter Exposure Assessment Study for the Ports of Los Angeles and Long Beach, April 2006. This document is available electronically at: *http://www.arb.ca.gov/regact/marine2005/portstudy0406.pdf*. These documents are available in Docket EPA–HQ–OAR–2007–0121.

will be placed in the docket for this rulemaking when the study is completed. The $PM_{2.5}$ and NO_X reductions which would occur as a result of applying advanced emissions control strategies to Category 3 marine engines could both reduce the amount of emissions that populations near these sources are exposed to and assist state and local governments as they work to reduce NO_X and $PM_{2.5}$ inventories.

Today millions of Americans continue to live in areas that do not meet existing air quality standards. As of June 2007 there are approximately 88 million people living in 39 designated areas (which include all or part of 208 counties) that either do not meet the current $PM_{2.5}$ NAAQS or contribute to violations in other counties, and 149 million people living in 94 areas (which include all or part of 391 counties) designated as not in attainment for the 8-hour ozone NAAQS. These numbers do not include the people living in areas where there is a significant future risk of failing to maintain or achieve either the $PM_{2.5}$ or ozone NAAQS.

Figure II–1 illustrates the widespread nature of these problems and depicts counties which are currently (as of March 2007) designated nonattainment for either or both the 8-hour ozone NAAQS and $PM_{2.5}$ NAAQS. It also shows the location of mandatory class I federal areas for visibility. Superimposed on this map are top U.S. ports many of which receive significant port stops from ocean going vessels operating with Category 3 marine engines. Currently more than 40 major U.S. deep sea ports are located in these nonattainment areas. Many ports are located in areas rated as class I federal areas for visibility impairment and regional haze. It should be noted that emissions from ocean-going vessels are not simply a localized problem related only to cities that have commercial ports. Virtually all U.S. coastal areas are affected by emissions from ships that transit between those ports, using shipping lanes that are close to land. Many of these coastal areas also have high population densities. For example, Santa Barbara, which has no commercial port, estimates that engines on ocean-going marine vessels currently contribute about 37 percent of total NO_X in their area.[17] These emissions are from ships that transit the area, and ''are comparable to (even slightly larger than) the amount of NO_X produced onshore by cars and truck.'' By 2015 these emissions are expected to increase 67 percent, contributing 61 percent of Santa Barbara's total NO_X emissions. This mix of emission sources led Santa Barbara to point out that they will be unable to meet air quality standards for ozone without significant emission reductions from these vessels, even if they completely eliminate all other sources of pollution. Interport emissions from OGV also contribute to other environmental problems, affecting sensitive marine and land ecosystems. As discussed above, EPA recently completed estimates of the contribution of Category 3 engines to emission inventories. We recognize that air quality effects may vary from one port/coastal area to another with differences in meteorology, because of spatial differences in emissions with ship movements within regional areas. In addition, these emissions may also affect adjacent coastal areas. For these reasons, we plan to study several different port areas to better assess the air quality effects of emissions from Category 3 engines. We believe that there are additional port and adjacent coastal areas affected by emissions from Category 3 marine engines. We will be performing air quality modeling specific to this issue to better assess these impacts.

[17] Memorandum to Docket A–2001–11 from Jean-Marie Revelt, Santa Barbara County Air Quality News, Issue 62, July–August 2001 and other materials provided to EPA by Santa Barbara County,'' March 14, 2002.

BILLING CODE 6560–50–P

Figure II-1 Air Quality Problems are Widespread Especially in U.S. Port Areas

BILLING CODE 6560–50–C

Emissions from Category 3 marine engines account for a substantial and growing portion of the U.S.'s coastal ambient $PM_{2.5}$ and NO_X levels. The emission reductions from tightened Category 3 marine engine standards could play an important part in states' efforts to attain and maintain the NAAQS in the coming decades, especially in coastal nonattainment areas, where these engines comprise a large portion of the remaining NO_X and $PM_{2.5}$ emissions inventories. For example, 2001 emission inventories for California's South Coast ozone and PM nonattainment areas [18] indicate that ocean-going vessels (OGVs) contribute about 30 tons per day (tpd) of NO_X and 2½ tpd of $PM_{2.5}$ to regional inventories—and absent additional emission controls, this number would almost triple in 2020 to 86 tpd of NO_X and 8 tpd of $PM_{2.5}$ as port-related activities continue to grow. The Houston-Galveston-Beaumont area is also faced with growing OGV inventories which continue to hamper their area's effort to achieve and maintain clean air. Today, OGVs in the Houston nonattainment area annually contribute about 27 tpd of NO_X emissions and this is projected to climb to 30 tpd by 2009.[19] In the Corpus Christi area, OGVs in 2001 were responsible for about 16 tpd of NO_X.[20] Finally, in the New York/Northern New Jersey nonattainment area, 2000 inventories [21] indicated that OGVs contributed 12 tpd of NO_X emissions and about 0.75 tpd of $PM_{2.5}$ emissions to PM inventories. We request comment on the impact Category 3 marine engines have on state and local emission inventories as well as their efforts to meet the ozone and $PM_{2.5}$ NAAQS.

Recently, new studies [22] from the State of California provide evidence that $PM_{2.5}$ emissions within marine ports contribute significantly to elevated ambient concentrations near these sources. A substantial number of people experience exposure to Category 3 marine engine emissions, raising potential health concerns. Additional information on marine port emissions and ambient exposures can be found in section II.B.3 of this ANPRM.

In addition to public health impacts, there are serious public welfare and environmental impacts associated with ozone and $PM_{2.5}$. Specifically, ozone causes damage to vegetation which leads to crop and forestry economic losses, as well as harm to national parks, wilderness areas, and other natural systems. NO_X, SO_X and $PM_{2.5}$ can contribute to the substantial impairment of visibility in many parts of the U.S., where people live, work, and recreate, including national parks, wilderness areas, and mandatory class I federal areas. The deposition of airborne particles can also reduce the aesthetic appeal of buildings and culturally important articles through soiling, and can contribute directly (or in conjunction with other pollutants) to structural damage by means of corrosion or erosion. Finally, NO_X and SO_X emissions from diesel engines contribute to the acidification, nitrification, and eutrophication of water bodies.

While EPA has already adopted many emission control programs that are expected to reduce ambient ozone and $PM_{2.5}$ levels, including the Clean Air Interstate Rule (CAIR) (70 FR 25162, May 12, 2005), the Clean Air Nonroad Diesel Rule (69 FR 38957, June 29, 2004), the Heavy Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (66 FR 5002, Jan. 18, 2001), and the Tier 2 Vehicle and Gasoline Sulfur Program (65 FR 6698, Feb. 10, 2000), the $PM_{2.5}$ and NO_X emission reductions resulting from tightened standards for Category 3 marine diesel engines would greatly assist nonattainment areas, especially along our nation's coasts, in attaining and maintaining the ozone and the $PM_{2.5}$ NAAQS in the near term and in the decades to come.

In September 2006, EPA finalized revised $PM_{2.5}$ NAAQS. Nonattainment areas will be designated with respect to the revised $PM_{2.5}$ NAAQS in early 2010. EPA modeling, conducted as part of finalizing the revised NAAQS, projects that in 2015 up to 52 counties with 53 million people may violate the daily, annual, or both standards for $PM_{2.5}$ while an additional 27 million people in 54 counties may live in areas that have air quality measurements within 10 percent of the revised NAAQS. Even in 2020 up to 48 counties, with 54 million people, may still not be able to meet the revised $PM_{2.5}$ NAAQS and an additional 25 million people, living in 50 counties, are projected to have air quality measurements within 10 percent of the revised standards. The $PM_{2.5}$ inventory reductions that would be achieved from applying advanced emissions control strategies to Category 3 engines could be useful in helping coastal nonattainment areas, to both attain and maintain the revised $PM_{2.5}$ NAAQS.

State and local governments are working to protect the health of their citizens and comply with requirements of the Clean Air Act (CAA or "the Act"). As part of this effort they recognize the need to secure additional major reductions in both $PM_{2.5}$ and NO_X emissions by undertaking state level action.[23] However, they also seek further Agency action for national standards, including the setting of stringent new Category 3 marine engine standards since states are preempted from setting new engine emissions standards for this class of engines.[24]

B. Public Health Impacts

1. Particulate Matter

The emission control program for Category 3 marine engines has the potential to significantly reduce their contribution to $PM_{2.5}$ inventories. In addition, these engines emit high levels of NO_X which react in the atmosphere to form secondary $PM_{2.5}$, ammonium nitrate. Category 3 marine engines also emit large amounts of SO_2 and HC which react in the atmosphere to form secondary $PM_{2.5}$ composed of sulfates and organic carbonaceous $PM_{2.5}$. The emission control program being considered would reduce the contribution of Category 3 engines to both directly emitted diesel PM and secondary PM emissions.

---

[18] California Air Resources Board (2006). Emission Reduction Plan for Ports and Goods Movements, (April 2006) Appendix B–3, Available electronically at *http://www.arb.ca.gov/gmp/docs/finalgmpplan090905.pdf.*

[19] Texas Commission On Environmental Quality (2006) Houston-Galveston-Brazoria 8-Hour Ozone State Implemental Plan & Rules, Informational Meeting Presentation, Kelly Keel, Air Quality Planning Section.

[20] Air Consulting and Engineering Solutions, Final Report Phase II Corpus Christi Regional Airshed, (August 2001) Project Number 21–01–0006.

[21] The Port Authority of New York & New Jersey, (2003), The New York, Northern New Jersey, Long Island Nonattainment Area Commercial Marine Vessel Emissions Inventory, Prepared by Starcrest Consulting Group, LLC.

[22] State of California Air Resources Board. Roseville Rail Yard Study. Stationary Source Division, October 14, 2004. This document is available electronically at: *http://www.arb.ca.gov/diesel/documents/rrstudy.htm* and State of California Air Resources Board. Diesel Particulate Matter Exposure Assessment Study for the Ports of Los Angeles and Long Beach, April 2006. This document is available electronically at: *ftp://ftp.arb.ca.gov/carbis/msprog/offroad/marineves/documents/portstudy0406.pdf.* These documents are available in Docket EPA–HQ–OAR–2007–0121.

[23] For example, see: California Air Resources Board (2006). Emission Reduction Plan for Ports and Goods Movements, (April 2006), Available electronically at *http://www.arb.ca.gov/gmp/docs/finalgmpplan090905.pdf.*

[24] For example, see letter dated November 29, 2006 from California Environmental Protection Agency to Administrator Stephen L. Johnson and January 20, 2006 letter from Executive Director, Puget Sound Clean Air Agency to Administrator Stephen L. Johnson.

(a) Background

Particulate matter (PM) represents a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. PM is further described by breaking it down into size fractions. PM_{10} refers to particles generally less than or equal to 10 micrometers (μm). $PM_{2.5}$ refers to fine particles, those particles generally less than or equal to 2.5 μm in diameter. Inhalable (or ''thoracic'') coarse particles refer to those particles generally greater than 2.5 μm but less than or equal to 10 μm in diameter. Ultrafine PM refers to particles less than 100 nanometers (0.1 μm). Larger particles tend to be removed by the respiratory clearance mechanisms (e.g. coughing), whereas smaller particles are deposited deeper in the lungs.

Fine particles are produced primarily by combustion processes and by transformations of gaseous emissions (e.g., SO_X, NO_X and VOCs) in the atmosphere. The chemical and physical properties of $PM_{2.5}$ may vary greatly with time, region, meteorology, and source category. Thus, $PM_{2.5}$, may include a complex mixture of different pollutants including sulfates, nitrates, organic compounds, elemental carbon and metal compounds. These particles can remain in the atmosphere for days to weeks and travel through the atmosphere hundreds to thousands of kilometers.

The primary $PM_{2.5}$ NAAQS includes a short-term (24-hour) and a long-term (annual) standard. The 1997 $PM_{2.5}$ NAAQS established by EPA set the 24-hour standard at a level of 65μg/m^3 based on the 98th percentile concentration averaged over three years. (This air quality statistic compared to the standard is referred to as the ''design value.'') The annual standard specifies an expected annual arithmetic mean not to exceed 15μg/m^3 averaged over three years. EPA has recently finalized $PM_{2.5}$ nonattainment designations for the 1997 standard (70 FR 943, Jan 5, 2005).[25] All areas currently in nonattainment for $PM_{2.5}$ will be required to meet these 1997 standards between 2009 and 2014.

EPA has recently amended the NAAQS for $PM_{2.5}$ (71 FR 61144, October 17, 2006). The final rule, signed on September 21, 2006 and published in the **Federal Register** on October 17, 2006, addressed revisions to the primary and secondary NAAQS for PM to provide increased protection of public health and welfare, respectively. The level of the 24-hour $PM_{2.5}$ NAAQS was revised from 65μg/m^3 to 35μg/m^3 to provide increased protection against health effects associated with short-term exposures to fine particles. The current form of the 24-hour $PM_{2.5}$ standard was retained (e.g., based on the 98th percentile concentration averaged over three years). The level of the annual $PM_{2.5}$ NAAQS was retained at 15μg/m^3, continuing protection against health effects associated with long-term exposures. The current form of the annual $PM_{2.5}$ standard was retained as an annual arithmetic mean averaged over three years, however, the following two aspects of the spatial averaging criteria were narrowed: (1) The annual mean concentration at each site shall be within 10 percent of the spatially averaged annual mean, and (2) the daily values for each monitoring site pair shall yield a correlation coefficient of at least 0.9 for each calendar quarter.

With regard to the secondary $PM_{2.5}$ standards, EPA has revised these standards to be identical in all respects to the revised primary standards. Specifically, EPA has revised the current 24-hour $PM_{2.5}$ secondary standard by making it identical to the revised 24-hour $PM_{2.5}$ primary standard and retained the annual $PM_{2.5}$ secondary standard. This suite of secondary $PM_{2.5}$ standards is intended to provide protection against PM-related public welfare effects, including visibility impairment, effects on vegetation and ecosystems, and material damage and soiling.

The 2006 standards became effective on December 18, 2006. As a result of the 2006 $PM_{2.5}$ standard, EPA will designate new nonattainment areas in early 2010. The timeframe for areas attaining the 2006 PM NAAQS will likely extend from 2015 to 2020.

(b) Health Effects of $PM_{2.5}$

Scientific studies show ambient PM is associated with a series of adverse health effects. These health effects are discussed in detail in the 2004 EPA Particulate Matter Air Quality Criteria Document (PM AQCD), and the 2005 PM Staff Paper.[26] [27] [28]

Health effects associated with short-term exposures (hours to days) to ambient PM include premature mortality, increased hospital admissions, heart and lung diseases, increased cough, adverse lower-respiratory symptoms, decrements in lung function and changes in heart rate rhythm and other cardiac effects. Studies examining populations exposed to different levels of air pollution over a number of years, including the Harvard Six Cities Study and the American Cancer Society Study, show associations between long-term exposure to ambient $PM_{2.5}$ and both total and cardiovascular and respiratory mortality.[29] In addition, a reanalysis of the American Cancer Society Study shows an association between fine particle and sulfate concentrations and lung cancer mortality.[30] The Category 3 marine engines covered in this proposal contribute to both acute and chronic $PM_{2.5}$ exposures.

The health effects of $PM_{2.5}$ have been further documented in local impact studies which have focused on health effects due to $PM_{2.5}$ exposures measured on or near roadways.[31] Taking account of all air pollution sources, including both spark-ignition (gasoline) and diesel powered vehicles, these latter studies indicate that exposure to $PM_{2.5}$ emissions near roadways, dominated by mobile sources, are associated with potentially serious health effects. For instance, a recent study found associations between concentrations of cardiac risk factors in the blood of healthy young police officers and $PM_{2.5}$ concentrations measured in vehicles.[32] Also, a number of studies have shown associations between residential or school outdoor concentrations of some

[25] U.S. EPA, Air Quality Designations and Classifications for the Fine Particles ($PM_{2.5}$) National Ambient Air Quality Standards, December 17, 2004. (70 FR 943, Jan 5, 2005) This document is available in Docket EPA–HQ–OAR–2007–0121. This document is also available on the Web at: *http://www.epa.gov/pmdesignations/.*

[26] U.S. EPA (1996) Air Quality Criteria for Particulate Matter, EPA 600–P–95–001aF, EPA 600–P–95–001bF. This document is available in Docket EPA–HQ–OAR–2007–0121.

[27] U.S. EPA (2004) Air Quality Criteria for Particulate Matter (Oct 2004), Volume I Document No. EPA600/P–99/002aF and Volume II Document No. EPA600/P–99/002bF. This document is available in Docket EPA–HQ–OAR–2007–0121.

[28] U.S. EPA (2005) Review of the National Ambient Air Quality Standard for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper. EPA–452/R–05–005. This document is available in Docket EPA–HQ–OAR–2007–0121.

[29] Dockery, DW; Pope, CA III: Xu, X; *et al.* 1993. An association between air pollution and mortality in six U.S. cities. N Engl J Med 329:1753–1759.

[30] Pope Ca, III; Thun, MJ; Namboodiri, MM; Docery, DW; Evans, JS; Speizer, FE; Heath, CW. 1995. Particulate air pollution as a predictor of mortality in a prospective study of U.S. adults. Am J Respir Crit Care Med 151:669–674.

[31] Riekider, M.; Cascio, W.E.; Griggs, T.R.; Herbst, M.C.; Bromberg, P.A.; Neas, L.; Williams, R.W.; Devlin, R.B. (2003) Particulate Matter Exposures in Cars is Associated with Cardiovascular Effects in Healthy Young Men. Am. J. Respir. Crit. Care Med. 169: 934–940.

[32] Riediker, M.; Cascio, W.E.; Griggs, T.R.; et al. (2004) Particulate matter exposure in cars is associated with cardiovascular effects in healthy young men. Am J Respir Crit Care Med 169: 934–940.

constituents of fine particles found in motor vehicle exhaust and adverse respiratory outcomes, including asthma prevalence in children who live near major roadways.[33 34 35] Although the engines considered in this proposal differ with those in these studies with respect to their applications and fuel qualities, these studies provide an indication of the types of health effects that might be expected to be associated with personal exposure to $PM_{2.5}$ emissions from Category 3 marine engines. By reducing their contribution to $PM_{2.5}$ inventories, the emissions controls under consideration also would reduce exposure to these emissions, specifically exposure near marine ports and shipping routes.

2. Ozone

The emissions reduction program under consideration for Category 3 marine engines would reduce the contribution of these engines NO_X inventories. These engines currently have high NO_X emissions due to the size of the engine and because they are relatively uncontrolled. NO_X contributes to the formation of ground-level ozone pollution or smog. People in many areas across the U.S. continue to be exposed to unhealthy levels of ambient ozone.

(a) Background

Ground-level ozone pollution is formed by the reaction of VOCs and NO_X in the atmosphere in the presence of heat and sunlight. These two pollutants, often referred to as ozone precursors, are emitted by many types of pollution sources, such as highway and nonroad motor vehicles and engines, power plants, chemical plants, refineries, makers of consumer and commercial products, industrial facilities, and smaller ''area'' sources.

The science of ozone formation, transport, and accumulation is complex.[36] Ground-level ozone is produced and destroyed in a cyclical set of chemical reactions, many of which are sensitive to temperature and sunlight. When ambient temperatures and sunlight levels remain high for several days and the air is relatively stagnant, ozone and its precursors can build up and result in more ozone than typically would occur on a single high-temperature day. Ozone also can be transported from pollution sources into areas hundreds of miles downwind, resulting in elevated ozone levels even in areas with low local VOC or NO_X emissions.

The highest levels of ozone are produced when both VOC and NO_X emissions are present in significant quantities on clear summer days. Relatively small amounts of NO_X enable ozone to form rapidly when VOC levels are relatively high, but ozone production is quickly limited by removal of the NO_X. Under these conditions NO_X reductions are highly effective in reducing ozone while VOC reductions have little effect. Such conditions are called ''NO_X-limited''. Because the contribution of VOC emissions from biogenic (natural) sources to local ambient ozone concentrations can be significant, even some areas where man-made VOC emissions are relatively low can be NO_X limited.

When NO_X levels are relatively high and VOC levels relatively low, NO_X forms inorganic nitrates (i.e., particles) but relatively little ozone. Such conditions are called ''VOC-limited.'' Under these conditions, VOC reductions are effective in reducing ozone, but NO_X reductions can actually increase local ozone under certain circumstances. Even in VOC-limited urban areas, NO_X reductions are not expected to increase ozone levels if the NO_X reductions are sufficiently large.

Rural areas are usually NO_X-limited, due to the relatively large amounts of biogenic VOC emissions in many rural areas. Urban areas can be either VOC- or NO_X-limited, or a mixture of both, in which ozone levels exhibit moderate sensitivity to changes in either pollutant. Ozone concentrations in an area also can be lowered by the reaction of nitric oxide with ozone, forming nitrogen dioxide (NO_2); as the air moves downwind and the cycle continues, the NO_2 forms additional ozone. The importance of this reaction depends, in part, on the relative concentrations of NO_X, VOC, and ozone, all of which change with time and location.

The current ozone NAAQS has an 8-hour averaging time. The 8-hour ozone NAAQS is met at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration over three years is less than or equal to 0.084 ppm. On June 20, 2007 EPA proposed to strengthen the ozone NAAQS. The proposed revisions reflect new scientific evidence about ozone and its effects on public health and welfare.[37] The final ozone NAAQS rule is scheduled for March 2008.

(b) Health Effects of Ozone

The health and welfare effects of ozone are well documented and are assessed in EPA's 2006 ozone Air Quality Criteria Document (ozone AQCD) and EPA staff papers.[38 39] Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest. Ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's activity. Ozone can also aggravate asthma, leading to more asthma attacks that require a doctor's attention and/or the use of additional medication. Animal toxicological evidence indicates that with repeated exposure, ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue and irreversible reductions in lung function. People who are more susceptible to effects associated with

---

[33] Van Vliet, P.; Knape, M.; de Hartog, J.; Janssen, N.; Harssema, H.; Brunekreef, B. (1997). Motor vehicle exhaust and chronic respiratory symptoms in children living near freeways. Env. Research 74: 122–132.

[34] Brunekreef, B., Janssen, N.A.H.; de Hartog, J.; Harssema, H.; Knape, M.; van Vliet, P. (1997). Air pollution from truck traffic and lung function in children living near roadways. Epidemiology 8:298–303.

[35] Kim, J.J.; Smorodinsky, S.; Lipsett, M.; Singer, B.C.; Hodgson, A.T.; Ostro, B (2004). Traffic-related air pollution near busy roads: The East Bay children's respiratory health study. Am. J. Respir. Crit. Care Med. 170: 520–526.

[36] U.S. EPA Air Quality Criteria for Ozone and Related Photochemical Oxidants (Final). U.S. Environmental Protection Agency, Washington, D.C., EPA 600/R–05/004aF–cF, 2006. This document may be accessed electronically at: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_cd.html*. This document is available in Docket EPA–HQ–OAR–2007–0121.

[37] EPA proposes to set the 8-hour primary ozone standard to a level within the range of 0.070–0.075 ppm. The agency also requests comments on alternative levels of the 8-hour primary ozone standard, within a range from 0.060 ppm up to and including retention of the current standard (0.084 ppm). EPA also proposes two options for the secondary ozone standard. One option would establish a new form of standard designed specifically to protect sensitive plants from damage caused by repeated ozone exposure throughout the growing season. This cumulative standard would add daily ozone concentrations across a three month period. EPA is proposing to set the level of the cumulative standard within the range of 7 to 21 ppm-hours. The other option would follow the current practice of making the secondary standard equal to the proposed 8-hour primary standard.

[38] U.S. EPA Air Quality Criteria for Ozone and Related Photochemical Oxidants (Final). U.S. Environmental Protection Agency, Washington, D.C., EPA 600/R–05/004aF–cF, 2006. This document is available in Docket EPA–HQ–OAR–2007–0121. This document may be accessed electronically at: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_cd.html*.

[39] U.S. EPA (2006) Review of the National Ambient Air Quality Standards for Ozone, Policy Assessment of Scientific and Technical Information. OAQPS Staff Paper Second Draft.EPA–452/D–05–002. This document is available in Docket EPA–HQ–OAR–2007–0121. This document is available electronically at: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_sp.html*.

exposure to ozone include children, the elderly, and individuals with respiratory disease such as asthma. As of the 2006 review, there was suggestive evidence that certain people may have greater genetic susceptibility. Those with greater exposures to ozone, for instance due to time spent outdoors (e.g., children and outdoor workers), are also of concern.

The recent ozone AQCD also examined relevant new scientific information which has emerged in the past decade, including the impact of ozone exposure on such health effect indicators as changes in lung structure and biochemistry, inflammation of the lungs, exacerbation and causation of asthma, respiratory illness-related school absence, hospital admissions and premature mortality. Animal toxicological studies have suggested potential interactions between ozone and PM with increased responses observed to mixtures of the two pollutants compared to either ozone or PM alone. The respiratory morbidity observed in animal studies along with the evidence from epidemiologic studies supports a causal relationship between acute ambient ozone exposures and increased respiratory-related emergency room visits and hospitalizations in the warm season. In addition, there is suggestive evidence of a contribution of ozone to cardiovascular-related morbidity and non-accidental and cardiopulmonary mortality.

3. Air Toxics

People experience elevated risk of cancer and other noncancer health effects from exposure to air toxics. Mobile sources are responsible for a significant portion of this exposure. According to the National Air Toxic Assessment (NATA) for 1999, mobile sources, including Category 3 marine engines, were responsible for 44 percent of outdoor toxic emissions and almost 50 percent of the cancer risk among the 133 pollutants quantitatively assessed in the 1999 NATA. Benzene is the largest contributor to cancer risk of all the assessed pollutants and mobile sources were responsible for about 68 percent of all benzene emissions in 1999. Although the 1999 NATA did not quantify cancer risks associated with exposure to diesel exhaust, EPA has concluded that diesel exhaust ranks with the other air toxic substances that the national-scale assessment suggests pose the greatest relative risk.

According to the 1999 NATA, nearly the entire U.S. population was exposed to an average level of air toxics that has the potential for adverse respiratory noncancer health effects. This potential was indicated by a hazard index (HI) greater than 1.[40] Mobile sources were responsible for 74 percent of the potential noncancer hazard from outdoor air toxics in 1999. About 91 percent of this potential noncancer hazard was from acrolein;[41] however, the confidence in the RfC for acrolein is medium[42] and confidence in NATA estimates of population noncancer hazard from ambient exposure to this pollutant is low.[43] It is important to note that NATA estimates of noncancer hazard do not include the adverse health effects associated with particulate matter identified in EPA's Particulate Matter Air Quality Criteria Document. Gasoline and diesel engine emissions contribute significantly to with particulate matter concentration.

It should be noted that the NATA modeling framework has a number of limitations which prevent its use as the sole basis for setting regulatory standards. These limitations and uncertainties are discussed on the 1999 NATA Web site.[44] Even so, this modeling framework is very useful in identifying air toxic pollutants and sources of greatest concern, setting regulatory priorities, and informing the decision making process.

The following section provides a brief overview of air toxics which are associated with nonroad engines, including Category 3 marine engines, and provides a discussion of the health risks associated with each air toxic.

(a) Diesel Exhaust (DE)

Category 3 marine engines emit diesel exhaust (DE), a complex mixture comprised of carbon dioxide, oxygen, nitrogen, water vapor, carbon monoxide, nitrogen compounds, sulfur compounds and numerous low-molecular-weight hydrocarbons. A number of these gaseous hydrocarbon components are individually known to be toxic including aldehydes, benzene and 1,3-butadiene. The diesel particulate matter (DPM) present in diesel exhaust consists of fine particles (< 2.5 µm), including a subgroup with a large number of ultrafine particles (< 0.1 µm). These particles have large surface area which makes them an excellent medium for adsorbing organics and their small size makes them highly respirable and able to reach the deep lung. Many of the organic compounds present on the particles and in the gases are individually known to have mutagenic and carcinogenic properties. Diesel exhaust varies significantly in chemical composition and particle sizes between different engine types (heavy-duty, light-duty), engine operating conditions (idle, accelerate, decelerate), and fuel formulations (high/low sulfur fuel).[45] After being emitted in the engine exhaust, diesel exhaust undergoes dilution as well as chemical and physical changes in the atmosphere. The lifetime for some of the compounds present in diesel exhaust ranges from hours to days.

(1) Diesel Exhaust: Potential Cancer Effect of Diesel Exhaust

In EPA's 2002 Diesel Health Assessment Document (Diesel HAD),[46] diesel exhaust was classified as likely to be carcinogenic to humans by inhalation at environmental exposures, in accordance with the revised draft 1996/1999 EPA cancer guidelines. A number of other agencies (National Institute for Occupational Safety and Health, the International Agency for Research on

[40] To express chronic noncancer hazards, we used the RfC as part of a calculation called the hazard quotient (HQ), which is the ratio between the concentration to which a person is exposed and the RfC. (RfC is defined by EPA as, ''an estimate of a continuous inhalation exposure to the human population, including sensitive subgroups, with uncertainty spanning perhaps an order of magnitude, that is likely to be without appreciable risks of deleterious noncancer effects during a lifetime.'') A value of the HQ less than one indicates that the exposure is lower than the RfC and that no adverse health effects would be expected. Combined noncancer hazards were calculated using the hazard index (HI), defined as the sum of hazard quotients for individual air toxic compounds that affect the same target organ or system. As with the hazard quotient, a value of the HI at or below 1.0 will likely not result in adverse effects over a lifetime of exposure. However, a value of the HI greater than 1.0 does not necessarily suggest a likelihood of adverse effects. Furthermore, the HI cannot be translated into a probability that adverse effects will occur and is not likely to be proportional to risk.

[41] U.S. EPA. U.S. EPA (2006) National-Scale Air Toxics Assessment for 1999. This material is available electronically at *http://www.epa.gov/ttn/atw/nata1999/risksum.html.*

[42] U.S. EPA (2003) Integrated Risk Information System File of Acrolein. National Center for Environmental Assessment, Office of Research and Development, Washington, DC 2003. This material is available electronically at *http://www.epa.gov/iris/subst/0364.htm.*

[43] U.S. EPA (2006) National-Scale Air Toxics Assessment for 1999. This material is available electronically at *http://www.epa.gov/ttn/atw/nata1999/risksum.html.*

[44] U.S. EPA (2006) National-Scale Air Toxics Assessment for 1999. *http://www.epa.gov/ttn/atw/nata1999.*

[45] U.S. EPA (2002) Health Assessment Document for Diesel Engine Exhaust. EPA/600/8–90/057F Office of Research and Development, Washington DC. Pp1–1 1–2. This document is available in Docket EPA–HQ–OAR–2007–0121. This document is available electronically at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060.*

[46] U.S. EPA (2002) Health Assessment Document for Diesel Engine Exhaust. EPA/600/8–90/057F Office of Research and Development, Washington DC. This document is available in Docket EPA–HQ–OAR–2007–0121.

This document is available electronically at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060.*

Cancer, the World Health Organization, California EPA, and the U.S. Department of Health and Human Services) have made similar classifications. However, EPA also concluded in the Diesel HAD that it is not possible currently to calculate a cancer unit risk for diesel exhaust due to a variety of factors that limit the current studies, such as limited quantitative exposure histories in occupational groups investigated for lung cancer.

For the Diesel HAD, EPA reviewed 22 epidemiologic studies on the subject of the carcinogenicity of workers exposed to diesel exhaust in various occupations, finding increased lung cancer risk, although not always statistically significant, in 8 out of 10 cohort studies and 10 out of 12 case-control studies within several industries, including railroad workers. Relative risk for lung cancer associated with exposure ranged from 1.2 to 1.5, although a few studies show relative risks as high as 2.6. Additionally, the Diesel HAD also relied on two independent meta-analyses, which examined 23 and 30 occupational studies respectively, which found statistically significant increases in smoking-adjusted relative lung cancer risk associated with diesel exhaust, of 1.33 to 1.47. These meta-analyses demonstrate the effect of pooling many studies and in this case show the positive relationship between diesel exhaust exposure and lung cancer across a variety of diesel exhaust-exposed occupations.[47 48 49]

In the absence of a cancer unit risk, the Diesel HAD sought to provide additional insight into the significance of the diesel exhaust-cancer hazard by estimating possible ranges of risk that might be present in the population. An exploratory analysis was used to characterize a possible risk range by comparing a typical environmental exposure level for highway diesel sources to a selected range of occupational exposure levels. The occupationally observed risks were then proportionally scaled according to the exposure ratios to obtain an estimate of the possible environmental risk. A number of calculations are needed to accomplish this, and these can be seen in the EPA Diesel HAD. The outcome was that environmental risks from diesel exhaust exposure could range from a low of 10 − 4 to 10 − 5 to as high as 10 − 3, reflecting the range of occupational exposures that could be associated with the relative and absolute risk levels observed in the occupational studies. Because of uncertainties, the analysis acknowledged that the risks could be lower than 10 − or 10 − 5, and a zero risk from diesel exhaust exposure was not ruled out.

Retrospective health studies of railroad workers have played an important part in determining that diesel exhaust is a likely human carcinogen. Key evidence of the diesel exhaust exposure linkage to lung cancer comes from two retrospective case-control studies of railroad workers which are discussed at length in the Diesel HAD.

(2) Diesel Exhaust: Other Health Effects

Noncancer health effects of acute and chronic exposure to diesel exhaust emissions are also of concern to the Agency. EPA derived an RfC from consideration of four well-conducted chronic rat inhalation studies showing adverse pulmonary effects.[50 51 52 53] The RfC is 5 μg/m³ for diesel exhaust as measured by diesel PM. This RfC does not consider allergenic effects such as those associated with asthma or immunologic effects. There is growing evidence, discussed in the Diesel HAD, that exposure to diesel exhaust can exacerbate these effects, but the exposure-response data were found to be lacking to derive an RfC. The EPA Diesel HAD states, ''With DPM [diesel particulate matter] being a ubiquitous component of ambient PM, there is an uncertainty about the adequacy of the existing DE [diesel exhaust] noncancer database to identify all of the pertinent DE-caused noncancer health hazards. (p. 9–19).

(3) Ambient $PM_{2.5}$ Levels and Exposure to Diesel Exhaust PM

The Diesel HAD briefly summarizes health effects associated with ambient PM and discusses the EPA's annual NAAQS of 15 μg/m³. In addition, both the 2004 AQCD and the 2005 Staff Paper for $PM_{2.5}$ have more recent information. There is a much more extensive body of human data showing a wide spectrum of adverse health effects associated with exposure to ambient PM, of which diesel exhaust is an important component. The $PM_{2.5}$ NAAQS is designed to provide protection from the noncancer and premature mortality effects of $PM_{2.5}$ as a whole, of which diesel PM is a constituent.

(4) Diesel Exhaust PM Exposures

Exposure of people to diesel exhaust depends on their various activities, the time spent in those activities, the locations where these activities occur, and the levels of diesel exhaust pollutants in those locations. The major difference between ambient levels of diesel particulate and exposure levels for diesel particulate is that exposure accounts for a person moving from location to location, proximity to the emission source, and whether the exposure occurs in an enclosed environment.

Occupational Exposures

Occupational exposures to diesel exhaust from mobile sources, including Category 3 marine engines, can be several orders of magnitude greater than typical exposures in the non-occupationally exposed population.

Over the years, diesel particulate exposures have been measured for a number of occupational groups resulting in a wide range of exposures from 2 to 1,280 μg/m³ for a variety of occupations. Studies have shown that miners and railroad workers typically have higher diesel exposure levels than other occupational groups studied, including firefighters, truck dock workers, and truck drivers (both short and long haul).[54] As discussed in the Diesel HAD, the National Institute of Occupational Safety and Health (NIOSH) has estimated a total of 1,400,000 workers are occupationally exposed to diesel exhaust from on-road and nonroad vehicles.

[47] U.S. EPA (2002) Health Assessment Document for Diesel Engine Exhaust. EPA/6008–90/057F Office of Research and Development, Washington DC. This document is available in Docket EPA–HQ–OAR–2007–0121.

[48] Bhatia, R., Lopipero, P., Smith, A. (1998) Diesel exposure and lung cancer. Epidemiology 9(1):84–91.

[49] Lipsett, M: Campleman, S; (1999) Occupational exposure to diesel exhaust and lung cancer: a meta-analysis. Am J Public Health 80(7): 1009–1017.

[50] Ishinishi, N; Kuwabara, N; Takaki, Y; et al. (1988) Long-term inhalation experiments on diesel exhaust. In: Diesel exhaust and health risks. Results of the HERP studies. Ibaraki, Japan: Research Committee for HERP Studies; pp. 11–84.

[51] Heinrich, U; Fuhst, R; Rittinghausen, S; et al. (1995) Chronic inhalation exposure of Wistar rats and two different strains of mice to diesel engine exhaust, carbon black, and titanium dioxide. Inhal. Toxicol. 7:553–556.

[52] Mauderly, JL; Jones, RK; Griffith, WC; et al. (1987) Diesel exhaust is a pulmonary carcinogen in rats exposed chronically by inhalation. Fundam. Appl. Toxicol. 9:208–221.

[53] Nikula, KJ; Snipes, MB; Barr, EB; et al. (1995) Comparative pulmonary toxicities and carcinogenicities of chronically inhaled diesel exhaust and carbon black in F344 rats. Fundam. Appl. Toxicol. 25:80–94.

[54] Diesel HAD Page 2–110, 8–12; Woskie, SR; Smith, TJ; Hammond, SK: et al. (1988a) Estimation of the DE exposures of railroad workers: II. National and historical exposures. Am J Ind Med 12:381–394.

Elevated Concentrations and Ambient Exposures in Mobile Source-Impacted Areas

Regions immediately downwind of marine ports and shipping channels experience elevated ambient concentrations of directly-emitted $PM_{2.5}$ from Category 3 marine engines. Due to the unique nature of marine ports, emissions from a large number of Category 3 marine engines are concentrated in a relatively small area.

A recent study conducted by the California Air Resources Board (CARB) examined the air quality impacts of railroad operations at the J.R. Davis Rail Yard, the largest service and maintenance rail facility in the western United States.[55] This is relevant in that locomotives use diesel engines similar to those used in marine vessels. The yard occupies 950 acres along a one-quarter mile wide and four mile long section of land in Roseville, CA. The study developed an emissions inventory for the facility for the year 2000 and modeled ambient concentrations of diesel PM using a well-accepted dispersion model (ISCST3). The study estimated substantially elevated concentrations in an area 5,000 meters from the facility, with higher concentrations closer to the rail yard. Using local meteorological data, annual average contributions from the rail yard to ambient diesel PM concentrations under prevailing wind conditions were 1.74, 1.18, 0.80, and 0.25 μg/m³ at receptors located 200, 500, 1000, and 5000 meters from the yard, respectively. Several tens of thousands of people live within the area estimated to experience substantial increases in annual average ambient $PM_{2.5}$ as a result of rail yard emissions.

Another study from CARB evaluated air quality impacts of diesel engine emissions within the Ports of Long Beach and Los Angeles in California, one of the largest ports in the U.S.[56] The study found that ocean going vessels comprised 53% of the diesel PM emissions while ship auxiliary engines' hoteling comprised another 20% of PM emissions for the marine ports. Like the earlier rail yard study, the port study employed the ISCST3 dispersion model. Also using local meteorological data, annual average concentrations were substantially elevated over an area exceeding 200,000 acres. Because the ports are located near heavily-populated areas, the modeling indicated that over 700,000 people lived in areas with at least 0.3 μg/m³ of port-related diesel PM in ambient air, about 360,000 people lived in areas with at least 0.6 μg/m³ of diesel PM, and about 50,000 people lived in areas with at least 1.5 ug/m³ of ambient diesel PM directly from the port. The study found that impacts could be discerned up to 15 miles from the marine port.

Overall, while these studies focus on only two large marine port and railroad facilities, they highlight the substantial contribution these facilities make to elevated ambient concentrations in populated areas.

We initiated a study in 2006 to better understand the populations that are living near rail yards and marine ports nationally. As part of this effort, a computer geographic information system (GIS) is being used to identify the locations and property boundaries of these facilities nationally, and to determine the size and demographic characteristics of the population living near these facilities. We anticipate that the results of this study will be completed in late 2007 and we intend to add this report to the public docket.

(b) Other Air Toxics-Benzene, 1,3-butadiene, Formaldehyde, Acetaldehyde, Acrolein, POM, Naphthalene

Category 3 marine engine emissions contribute to ambient levels of other air toxics known or suspected as human or animal carcinogens, or that have non-cancer health effects. These other compounds include benzene, 1,3-butadiene, formaldehyde, acetaldehyde, acrolein, polycyclic organic matter (POM), and naphthalene. All of these compounds, except acetaldehyde, were identified as national or regional risk drivers in the 1999 National-Scale Air Toxics Assessment (NATA). That is, for a significant portion of the population, these compounds pose a significant portion of the total cancer and noncancer risk from breathing outdoor air toxics. Furthermore, a significant portion of total nationwide emissions of these pollutants result from mobile sources. However, EPA does not have high confidence in the NATA data for all these compounds. Reducing the emissions from Category 3 marine engines would help reduce exposure to these harmful substances.

Air toxics can cause a variety of cancer and noncancer health effects. A number of the mobile source air toxic pollutants described in this section are known or likely to pose a cancer hazard in humans. Many of these compounds also cause adverse noncancer health effects resulting from inhalation exposures. These include neurological, cardiovascular, liver, kidney, and respiratory effects as well as effects on the immune and reproductive systems.

C. Other Environmental Effects

There are a number of public welfare effects associated with the presence of ozone and $PM_{2.5}$ in the ambient air including the impact of $PM_{2.5}$ on visibility and materials and the impact of ozone on plants, including trees, agronomic crops and urban ornamentals.

1. Visibility

Visibility can be defined as the degree to which the atmosphere is transparent to visible light. Visibility impairment manifests in two principal ways: as local visibility impairment and as regional haze.[57] Local visibility impairment may take the form of a localized plume, a band or layer of discoloration appearing well above the terrain as a result of complex local meteorological conditions. Alternatively, local visibility impairment may manifest as an urban haze, sometimes referred to as a ''brown cloud.'' This urban haze is largely caused by emissions from multiple sources in the urban areas and is not typically attributable to only one nearby source or to long-range transport. The second type of visibility impairment, regional haze, usually results from multiple pollution sources spread over a large geographic region. Regional haze can impair visibility in large regions and across states.

Visibility is important because it has direct significance to people's enjoyment of daily activities in all parts of the country. Individuals value good visibility for the well-being it provides them directly, where they live and work, and in places where they enjoy recreational opportunities. Visibility is also highly valued in significant natural areas such as national parks and wilderness areas and special emphasis is given to protecting visibility in these areas. For more information on visibility

[55] Hand, R.; Pingkuan, D.; Servin, A.; Hunsaker, L.; Suer, C. (2004) Roseville rail yard study. California Air Resources Board. [Online at *http://www.arb.ca.gov/diesel/documents/rrstudy.htm*]

[56] Di, P.; Servin, A.; Rosenkranz, K.; Schwehr, B.; Tran, H. (2006) Diesel particulate matter exposure assessment study for the Ports of Los Angeles and Long Beach. California Air Resources Board. [Online at *http://www.arb.ca.gov/msprog/offroad/marinevess/marinevess.htm*]

[57] See discussion in U.S. EPA , National Ambient Air Quality Standards for Particulate Matter; Proposed Rule; January 17, 2006, Vol71 p 2676. This document is available in Docket EPA–HQ–OAR–2007–0121. This information is available electronically at *http://epa.gov/fedrgstr/EPA-AIR/2006/January/Day-17/a177.pdf.*

see the final 2004 PM AQCD[58] as well as the 2005 PM Staff Paper.[59]

Fine particles are the major cause of reduced visibility in parts of the United States. EPA is pursuing a two-part strategy to address visibility. First, to address the welfare effects of PM on visibility, EPA set secondary $PM_{2.5}$ standards which would act in conjunction with the establishment of a regional haze program. In setting this secondary standard EPA concluded that $PM_{2.5}$ causes adverse effects on visibility in various locations, depending on PM concentrations and factors such as chemical composition and average relative humidity. Second, section 169 of the Clean Air Act provides additional authority to address existing visibility impairment and prevent future visibility impairment in the 156 national parks, forests and wilderness areas categorized as mandatory class I federal areas (62 FR 38680–38681, July 18, 1997).[60] In July 1999 the regional haze rule (64 FR 35714) was put in place to protect the visibility in mandatory class I federal areas. Visibility can be said to be impaired in both $PM_{2.5}$ nonattainment areas and mandatory class I federal areas.

Category 3 marine engines contribute to visibility concerns in these areas through their primary $PM_{2.5}$ emissions and their NO_X and SO_2 emissions which contribute to the formation of secondary $PM_{2.5}$.

Recently designated $PM_{2.5}$ nonattainment areas indicate that, as of June 20, 2007, almost 90 million people live in nonattainment areas for the 1997 $PM_{2.5}$ NAAQS. Thus, at least these populations would likely be experiencing visibility impairment, as well as many thousands of individuals who travel to these areas. In addition, while visibility trends have improved in mandatory Class I federal areas the most recent data show that these areas continue to suffer from visibility impairment. In summary, visibility impairment is experienced throughout the U.S., in multi-state regions, urban areas, and remote mandatory class I federal areas.[61] [62]

2. Plant and Ecosystem Effects of Ozone

Ozone contributes to many environmental effects, with impacts to plants and ecosystems being of most concern. Ozone can produce both acute and chronic injury in sensitive species depending on the concentration level and the duration of the exposure. Ozone effects also tend to accumulate over the growing season of the plant, so that even lower concentrations experienced for a longer duration have the potential to create chronic stress on vegetation. Ozone damage to plants includes visible injury to leaves and a reduction in food production through impaired photosynthesis, both of which can lead to reduced crop yields, forestry production, and use of sensitive ornamentals in landscaping. In addition, the reduced food production in plants and subsequent reduced root growth and storage below ground, can result in other, more subtle plant and ecosystems impacts. These include increased susceptibility of plants to insect attack, disease, harsh weather, interspecies competition and overall decreased plant vigor. The adverse effects of ozone on forest and other natural vegetation can potentially lead to species shifts and loss from the affected ecosystems, resulting in a loss or reduction in associated ecosystem goods and services. Lastly, visible ozone injury to leaves can result in a loss of aesthetic value in areas of special scenic significance like national parks and wilderness areas. The final 2006 ozone Air Quality Criteria Document (ozone AQCD)[63] presents more detailed information on ozone effects on vegetation and ecosystems.

As discussed above, Category 3 marine engine emissions of NO_X contribute to ozone and therefore the NO_X standards discussed in this action would help reduce crop damage and stress on vegetation from ozone.

3. Acid Deposition

Acid deposition, or acid rain as it is commonly known, occurs when NO_X and SO_2 react in the atmosphere with water, oxygen and oxidants to form various acidic compounds that later fall to earth in the form of precipitation or dry deposition of acidic particles. It contributes to damage of trees at high elevations and in extreme cases may cause lakes and streams to become so acidic that they cannot support aquatic life. In addition, acid deposition accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage.

The proposed NO_X and SO_X standards would help reduce acid deposition, thereby helping to reduce acidity levels in lakes and streams throughout the coastal areas of our country and help accelerate the recovery of acidified lakes and streams and the revival of ecosystems adversely affected by acid deposition. Reduced acid deposition levels will also help reduce stress on forests, thereby accelerating reforestation efforts and improving timber production. Deterioration of historic buildings and monuments, vehicles, and other structures exposed to acid rain and dry acid deposition also will be reduced, and the costs borne to prevent acid-related damage may also decline. While the reduction in nitrogen acid deposition will be roughly proportional to the reduction in NO_X emissions, the precise impact of new standards would differ across different areas.

4. Eutrophication and Nitrification

The NO_X standards discussed in this action would help reduce the airborne nitrogen deposition that contributes to eutrophication of watersheds, particularly in aquatic systems where atmospheric deposition of nitrogen represents a significant portion of total nitrogen loadings. Eutrophication is the accelerated production of organic matter, particularly algae, in a water body. This increased growth can cause numerous adverse ecological effects and economic impacts, including nuisance algal blooms, dieback of underwater plants due to reduced light penetration, and toxic plankton blooms. Algal and plankton blooms can also reduce the level of dissolved oxygen, which can adversely affect fish and shellfish populations. In recent decades, human activities have greatly accelerated nutrient impacts, such as nitrogen and phosphorus, causing excessive growth of algae and leading to degraded water

[58] U.S. EPA (2004) Air Quality Criteria for Particulate Matter (Oct 2004), Volume I Document No. EPA600/P–99/002aF and Volume II Document No. EPA600/P–99/002bF. This document is available in Docket EPA–HQ–OAR–2007–0121.

[59] U.S. EPA (2005) Review of the National Ambient Air Quality Standard for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper. EPA–452/R–05–005. This document is available in Docket EPA–HQ–OAR–2007–0121.

[60] These areas are defined in section 162 of the Act as those national parks exceeding 6,000 acres, wilderness areas and memorial parks exceeding 5,000 acres, and all international parks which were in existence on August 7, 1977.

[61] U.S. EPA, Air Quality Designations and Classifications for the Fine Particles ($PM_{2.5}$) National Ambient Air Quality Standards, December 17, 2004. (70 FR 943, Jan 5. 2005) This document is available in Docket EPA–HQ–OAR–2007–0121. This document is also available on the web at: *http://www.epa.gov/pmdesignations/*.

[62] U.S. EPA. Regional Haze Regulations, July 1, 1999. (64 FR 35714, July 1, 1999) This document is available in Docket EPA–HQ–OAR–2007–0121.

[63] U.S. EPA Air Quality Criteria for Ozone and Related Photochemical Oxidants (Final). U.S. Environmental Protection Agency, Washington, DC, EPA 600/R–05/004aF–cF, 2006. This document is available in Docket EPA–HQ–OAR–2007–0121. This document may be accessed electronically at: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_cd.html*.

quality and associated impairment of freshwater and estuarine resources for human uses.[64]

Severe and persistent eutrophication often directly impacts human activities. For example, losses in the nation's fishery resources may be directly caused by fishkills associated with low dissolved oxygen and toxic blooms. Declines in tourism occur when low dissolved oxygen causes noxious smells and floating mats of algal blooms create unfavorable aesthetic conditions. Risks to human health increase when the toxins from algal blooms accumulate in edible fish and shellfish, and when toxins become airborne, causing respiratory problems due to inhalation. According to the NOAA report, more than half of the nation's estuaries have moderate to high expressions of at least one of these symptoms—an indication that eutrophication is well developed in more than half of U.S. estuaries.[65]

5. Materials Damage and Soiling

The deposition of airborne particles can reduce the aesthetic appeal of buildings and culturally important articles through soiling, and can contribute directly (or in conjunction with other pollutants) to structural damage by means of corrosion or erosion.[66] Particles affect materials principally by promoting and accelerating the corrosion of metals, by degrading paints, and by deteriorating building materials such as concrete and limestone. Particles contribute to these effects because of their electrolytic, hygroscopic, and acidic properties, and their ability to adsorb corrosive gases (principally sulfur dioxide). The rate of metal corrosion depends on a number of factors, including the deposition rate and nature of the pollutant; the influence of the metal protective corrosion film; the amount of moisture present; variability in the electrochemical reactions; the presence and concentration of other surface electrolytes; and the orientation of the metal surface. The PM standards discussed in this action would help reduce the airborne particles that contribute to materials damage and soiling.

III. Relevant Clean Air Act Provisions

Section 213 of the Clean Air Act (the Act) gives us the authority to establish emission standards for nonroad engines and vehicles. Section 213(a)(3) requires the Administrator to set (and from time to time revise) standards for NO_X, VOCs, or carbon monoxide emissions from new nonroad engines, to reduce ambient levels of ozone and carbon monoxide. That section specifies that the ''standards shall achieve the greatest degree of emission reductions achievable through the application of technology which the Administrator determines will be available for the engines or vehicles.'' As part of this determination, the Administrator must give appropriate consideration to lead time, noise, energy, and safety factors associated with the application of such technology. Section 213(a)(4) authorizes the Administrator to establish standards on new engines to control emissions of pollutants, such as PM, which ''may reasonably be anticipated to endanger public health and welfare.'' In setting appropriate standards, EPA is instructed to take into account costs, noise, safety, and energy factors.

Section 211(c) of the CAA allows us to regulate fuels where emission products of the fuel either: (1) Cause or contribute to air pollution that reasonably may be anticipated to endanger public health or welfare, or (2) will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it will be in general use were such a regulation to be promulgated.

IV. International Regulation of Air Pollution From Ships

Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL) addresses air pollution from ships. Annex VI was adopted by the Parties to MARPOL at a Diplomatic Conference on September 26, 1997, and it went into force May 20, 2005. As of July 31, 2007, the Annex has been ratified by 44 countries, representing 74.1 percent of the world's merchant shipping tonnage.[67]

Globally harmonized regulation of ship emissions is generally recognized to be the preferred approach for addressing air emissions from ocean-going vessels. It reduces costs for ship owners, since they would not be required to comply with a patchwork of different standards that could occur if each country was setting its own standards, and it can simplify environmental protection for port and coastal states.

The significance of international shipping to the United States can be illustrated by port entrance statistics. In 1999, according to U.S. Maritime Administration (MARAD) data, about 90 percent of annual entrances to U.S. ports were made by foreign-flagged vessels (75,700 total entrances; 67,500 entrances by foreign vessels; entrances are for vessels engaged in foreign trade and do not include Jones Act[68] vessels). At the same time, however, only a small portion of those vessels account for most of the visits. In 1999, of the 7,800 foreign vessels that visited U.S. ports, about 12 percent accounted for about 50 percent of total vessel entrances; about 30 percent accounted for about 75 percent of the vessel entrances.[69]

The emission control program contained in Annex VI was the first step for the international control of air pollution from ships. However, as early as the 1997 conference, many countries ''already recognized that the NO_X emission limits established in Regulation 13 were very modest when compared with current technology developments.''[70] Consequently, a Conference Resolution was adopted at the 1997 conference that invited the Marine Environment Protection Committee (MEPC) to review the NO_X emission limits at a minimum of five-year intervals after entry into force of the protocol and, if appropriate, amend

[64] Deposition of Air Pollutants to the Great Waters, Third Report to Congress, June 2000, EPA–453/R–00–005. This document is available in Docket EPA–HQ–OAR–2007–0121. It is also available at *http://www.epa.gov/oar/oaqps/gr8water/3rdrpt/obtain.html*.

[65] Bricker, Suzanne B., *et al.*, National Estuarine Eutrophication Assessment, Effects of Nutrient Enrichment in the Nation's Estuaries, National Ocean Service, National Oceanic and Atmospheric Administration, September, 1999.

[66] U.S. EPA (2005) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper. This document is available in Docket EPA–HQ–OAR–2007–0121.

[67] See *http://www.imo.org* Go to Conventions, Status of Conventions—Summary.

[68] 46 USCS Appx § 688.

[69] Final Regulatory Support Document: Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder. EPA420–R–03–004, January 2003, pg. 3–50. This document is available at *http://www.epa.gov/otaq/regs/nonroad/marine/ci/r03004.pdf*. We will update these statistics for more recent years; however, these results are not expected to change significantly given the U.S. share of the ownership of ocean-going vessels. MARAD data from 2005 indicates that while about 4.7 percent of all ocean-going vessels are owned by citizens of the United States (5th largest fleet) only about 1.9 percent of all ocean-going vessels are flagged here. Also according to that data, while Greece, Japan, China, and Germany account for the largest fleets in terms of ownership (15.3, 13.0, 11, and 8.9 percent, respectively), Panama and Liberia account for the largest fleets by flag (21.6 and 8.9 percent, respectively).

[70] Proposal to Initiate a Revision Process, Submitted by Finland, Germany, Italy, the Netherlands, Norway, Sweden and the United Kingdom. MEPC 53/4/4, 15 April 2005. Marine Environment Protection Committee, 53rd Session, Agenda Item 4.

the NO_X limits to reflect more stringent controls.

The United States began advocating a review of the NO_X emission limits in 1999.[71] However, MEPC did not formally consider the issue until 2005, after the Annex went into effect. Negotiations for amendments to the Annex VI standards, including NO_X and SO_X emission limits, officially began in April 2006, with the most recent round of negotiations taking place in April 2007. The United States submitted a paper to that meeting (April 2007 Bulk Liquids and Gases Sub-Committee meeting, referred to as BLG–11) setting out an approach for new international engine and fuel standards. That approach forms the basis of the program outlined in this ANPRM.[72] Discussions are expected to continue through Summer 2008 and are expected to conclude at the October 2008 MEPC meeting. We will continue to coordinate our national rule for Category 3 emission limits with our activities at IMO.

V. Potential Standards and Effective Dates

Over the past several years, remarkable progress has been made for land-based highway and nonroad diesel engines in reducing NO_X and PM emissions. Current EPA standards for those land-based sources are anticipated to achieve emission reductions of more than 90 percent relative to uncontrolled NO_X and PM levels. In contrast, Category 3 marine engines are subject to modest NO_X standards only. In this rulemaking, we are considering a comprehensive program that would set long-term standards based on the use of high-efficiency catalytic aftertreatment. These standards would achieve substantial reductions in NO_X, PM, and SO_X exhaust emissions.

The program we are considering is based on the the U.S. Government proposal to IMO, which consists of near- and long-term NO_X limits for new engines based on engine controls and aftertreatment technology; NO_X limits for certain existing engines based on engine controls; and PM/SO_X limits that can be achieved through the use of exhaust gas cleaning or low sulfur fuel. To reduce the costs of the international program, the long-term new engine NO_X limits and the PM/SO_X limits would not apply while ships are operating on the open ocean; instead, they would in specified geographic areas to be defined under the treaty.

This section describes in greater detail how we are considering that emission control program for our federal action under the Clean Air Act.

A. NO_X Standards

Tier 2 NO_X limits: We are considering new NO_X emission standards for Category 3 marine diesel engines. As discussed in Section VI, emission control technology for Category 3 marine engines has progressed substantially in recent years. Significant reductions can be achieved in the near term through in-cylinder controls with little or no impact on overall vessel performance. These technologies include traditional engine-out controls such as electronically controlled high pressure common-rail fuel systems, turbocharger optimization, compression-ratio changes, and electronically controlled exhaust valves. Further emission reductions could be achieved through the use of water-based technologies such as water emulsification, direct water injection, or intake-air humidification or through exhaust gas recirculation. We request comment on setting a near term NO_X emission standard requiring a reduction of 15 to 25 percent below the current Tier 1 standard. We are considering applying this near term standard to new engines as early as 2011.

Tier 3 NO_X limits: In the longer term, we believe that much greater emission reductions could be achieved through the use of selective catalytic reduction (SCR). More than 300 SCR systems have been installed on marine vessels, some of which have been in operation for more than 10 years and have accumulated 80,000 hours of operation. While many of these applications have been limited to certain vessel classes, we believe that the technology is feasible for application to most engines given adequate lead time. As discussed in Section VI, SCR systems are capable of reducing NO_X on the order of 90 to 95 percent compared to current emission levels. We further believe that an 80 percent reduction from the Tier 2 levels discussed above is achievable throughout the life of the vessel. We are requesting comment on setting a NO_X standard 80 percent below the Tier 2 standards in the 2016 timeframe. Low sulfur distillate fuel would help in achieving these limits due to the impact of sulfur on catalyst operation; however, we do not believe low sulfur fuel is necessary to achieve these reductions. SCR systems have been used on residual fuel, with sulfur levels as high as 2.5 to 3 percent. However low sulfur distillate fuel would allow SCR systems to be smaller, more efficient, less costly, and simpler to operate.

NO_X limits for existing engines: Due to the very long life of ocean-going vessels and the availability of known in-cylinder technical modifications that provide significant and cost-effective NO_X reductions, the U.S. proposal to IMO presents potential NO_X emission limits for engines on vessels built prior to the Tier 1 limits. We are requesting comment on requiring engines on these vessels to be retrofitted to meet the Tier 1 standard. The U.S. submittal proposed that this requirement would start in 2012. Although the Tier 1 standards went into effect in the United States in 2004, manufacturers have been building engines with emissions that meet this limit since 2000 due to the MARPOL Annex VI NO_X standard. Although the Annex VI standards did not go into force until 2005, they apply to engines installed on vessels built on or after January 1, 2000.

Engines may be retrofitted to achieve meaningful emission reduction by applying technology used by manufacturers to meet the Tier 1 limits. These technologies include slide-valve fuel injectors and injection timing retard. Manufacturers have indicated that they can reduce NO_X emissions by approximately 20 percent using this technology. However, some engines have higher baseline emissions than average and would require more than a 20 percent emission reduction to meet Tier 1 standards. Manufacturers have expressed concerns that they would not necessarily be able to reduce emissions to the Tier 1 standards for such engines through a simple retrofit. Therefore, the U.S. proposal to IMO considers a standard based on percent reduction rather than an absolute numerical limit. Specifically, these engines would need to be modified to reduce NO_X emissions by 20 percent from their existing baseline emission rate. Alternatively, we request comment on requiring vessel operators to perform a specific action, such as a valve or injector change, that would be known to achieve a particular NO_X reduction. In this case, the certification and compliance provisions would be based on the completion of this action rather than achieving a specified emission reduction.

Over time, engine manufacturers have changed their engine platforms as new

[71] Revision of the NO_X Technical Code, Tier 2 Emission Limits for Diesel Marine Engines At or Above 130 kW, submitted by the United States. MEPC 44/11/7, 24 December 1999. Marine Environment Protection Committee, 44th Session, Agenda Item 11.

[72] ''Revision of the MARPOL Annex VI, the NO_X Technical Code and Related Guidelines; Development of Standards for NO_X, PM, and SO_X,'' submitted by the United States, BLG 11/5, Sub-Committee on Bulk Liquids and Gases, 11th Session, Agenda Item 5, February 9, 2007, Docket ID EPA–HQ–OAR–2007–0121–0034. This document is also available on our Web site: *http://www.epa.gov/otaq/oceanvessels.com.*

technologies have become available. Many of the technologies that can be used to reduce NO_X emissions on modern engines may not be easily applied to older engine designs. Based on conversations with engine manufacturers we believe that engines built in the mid-1980s and later are compatible with the lower NO_X components. Therefore we are requesting comment on excluding engines installed on a vessel prior to 1985 from this requirement. We request comment on what generation of engines can be retrofitted to achieve NO_X reductions. Also, we request comment on the feasibility, costs, and other business impacts that would result from retrofitting existing engines to meet a NO_X standard as discussed above.

B. PM and SO_X Standards

For PM and SO_X emission control, we are considering emission performance standards that would reflect the use of low-sulfur distillate fuels or the use of exhaust gas cleaning technology, or a combination of both. As discussed in Section VI, SO_X emissions and the majority of the direct PM emissions from Category 3 marine engines operated on residual fuels are a direct result of fuel quality, most notably the sulfur in the fuel. In addition, SO_X emissions form secondary PM in the atmosphere. Other components of residual fuel, such as ash and heavy metals, also contribute directly to PM. Significant PM and SO_X reductions could be achieved by using low sulfur fuel residual fuel or distillate fuel. Alternatively, direct and indirect sulfur-based PM can be reduced through the use of a seawater scrubber in the exhaust system. Recent demonstration projects have shown that scrubbers are capable of reducing SO_X emissions on the order of 95 percent and can achieve substantial reductions in PM as well.

We request comment on setting a PM standard on the order of 0.5 g/kW-hr and a SO_X standard on the order of 0.4 g/kW-hr. We believe that the combination of these two performance-based standards would be a cost-effective way to approach both primary and secondary PM emission reductions because ship owners would have a variety of mechanisms to achieve the standard, including fuel switching or the use of emission scrubbers. This standard would apply as early as 2011 and would result in more than a 90 percent reduction in SO_X and approximately a 50–70 percent reduction in PM. We request comment on performance based PM and SO_X standards for Category 3 marine engines, what the standards should be, and an appropriate implementation date. We also request comment on allowing vessel operators the option to comply with the standards by simply using a distillate fuel with a maximum allowable sulfur level, such as 1,000 ppm. Under this option, no exhaust emission testing would be required to demonstrate compliance with the standard.

VI. Emission Control Technology

A. Engine-Based NO_X Control

1. Traditional In-Cylinder Controls

Engine manufacturers are meeting the Tier 1 NO_X standards [73] for Category 3 marine engines today through traditional in-cylinder fuel and air management approaches. These in-cylinder emission control technologies include electronic controls, optimizing the turbocharger, higher compression ratio, valve timing, and optimized fuel injection which may include common rail systems, timing retard, increased injection pressure, rate shaping, and changes to the number and size of injector holes to increase fuel atomization. Although U.S. standards became effective in 2004, most manufacturers began selling marine engines in 2000 that met the MARPOL Annex VI NO_X standard in anticipation of its ratification.

Manufacturers have indicated that they would be able to use in-cylinder engine control strategies to achieve further NO_X emission reductions beyond the Tier 1 standards. EUROMOT, which is an association of engine manufacturers, submitted a proposal to the International Maritime Organization for new Category 3 marine engine NO_X standards 2 g/kW-hr below the Tier 1 NO_X standard.[74] In this submission, they pointed to the following technologies for Category 3 marine engines operating on residual fuel: Fuel injection timing, high compression ratio, modified valve timing on 4-stroke engines, late exhaust valve closing on 2-stroke engines, and optimized fuel injection system and combustion chamber. EUROMOT stated that the limiting factors for NO_X design and optimization are increases in low load smoke and thermal load, PM and CO_2 emissions, fuel consumption, and concerns about engine reliability and load acceptance. We request comment on potential emission reductions beyond the Tier 1 NO_X standards that may be achieved through traditional in-cylinder technology and what the impact of the low NO_X designs would be on fuel consumption, maintenance, and on PM exhaust emissions.

Many of the same in-cylinder control technologies used to meet the Tier 1 NO_X standards can be used as retrofit technology on existing engines built prior to the Tier 1 standards. An example of this is retrofitting older fuel injectors with new injectors using slide-valve nozzle tips. The slide-valve in the nozzle tip limits fuel ''dripping'' which leads to higher HC, PM, and smoke emissions and engine fouling. This fuel nozzle can be combined with low-NO_X engine calibration to achieve about a 20 percent reduction in NO_X emissions through an engine retrofit.[75] This retrofit is relatively simple on engine platforms similar to those used for the Tier 1 compliant engines, but the slide-valve injectors may not be compatible with older engines. We request comment on the costs and other business impacts of retrofitting Category 3 marine engines built before 2000 to meet the Tier 1 NO_X standard.

2. Water-Based Technologies

NO_X emissions from Category 3 marine engines can be reduced by introducing water into the combustion process in combination with appropriate in-cylinder controls. Water can be used in the combustion process to lower the maximum combustion temperature, and therefore lower NO_X formation without a significant increase in fuel consumption. Water has a high heat capacity which allows it to absorb enough of the energy in the cylinder to reduce peak combustion temperatures. Data from engine manufacturers suggest that, depending on the amount of water and how it is introduced into the combustion chamber, a 30 to 80 percent reduction in NO_X can be achieved from Category 3 marine engines.[76 77 78]

[73] This NO_X standard is the same as the internationally negotiated NO_X standards established by the International Maritime Organization (IMO) in Annex VI to the International Convention on the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto (MARPOL).

[74] ''MARPOL Annex VI Revision—Proposals Related to Future Emission Limits and Issues for Clarification,'' Submitted by EUROMOT to the IMO Subcommittee on Bulk Liquids and Gases, BLG 10/14/12, January 26, 2006, Docket ID EPA–HQ–OAR–2007–0121–0014.

[75] Henningsen, S., ''2007 Panel Discussion on Emission Reduction Solutions for Marine Vessels; Engine Technologies'' presentation by MAN B&W at the Clean Ships: Advanced Technology for Clean Air Conference, February 8, 2007, Docket ID EPA–HQ–OAR–2007–0121–0031.

[76] Heim, K., ''Future Emission Legislation and Reduction Possibilities,'' presentation by Wartsila at the CIMAC Circle 2006, September 28, 2006, Docket ID EPA–HQ–OAR–2007–0121–0017.

[77] Aabo, K., Kjemtrup, N., ''Latest on Emission Control Water Emulsion and Exhaust Gas Re-Circulation,'' MAN B&W, CIMAC paper number 126, presented at International Council on

However, some increase in PM may result due to the lower combustion temperatures, depending on the water introduction strategy.[79] We request comment on the potential NO_X reductions achievable from water-based technologies and what the impact on other pollutants or fuel consumption may be.

Water may be introduced into the combustion process through emulsification with the fuel, direct injection into the combustion chamber, or saturating the intake air with water vapor. Water emulsification refers to mixing the fuel and water prior to injection. This strategy is limited by the instability of the water in the fuel, but can be improved by mixing the water into the fuel just prior to injection into the cylinder. More effective control can be achieved through the use of an independent injection nozzle in the cylinder for the water. Using a separate injector nozzle for water allows larger amounts of water to be added to the combustion process because the water is injected simultaneously with the fuel, and larger injection pumps and nozzles can be used for the water injection. In addition, the fuel injection timing and water flow rates can be better optimized at different engine speeds and loads. Even higher water-to-fuel ratios can be achieved through the use of combustion air humidification and steam injection. With combustion air humidification, a water nozzle is placed in the engine intake and an air heater is used to offset condensation. With steam injection, waste heat is used to vaporize water, which is then injected into the combustion chamber during the compression stroke.

Depending on the targeted NO_X emission reduction, the amount of water used can range from half as much as the fuel volume to more than three times as much. Fresh water is necessary for the water-based NO_X reduction techniques. Introducing saltwater into the engine could result in serious deterioration due to corrosion and fouling. For this reason, a ship using water strategies would need either to produce fresh water through the use of a desalination or distillation system or to store fresh water on-board. Often, waste heat in the exhaust is used to generate fresh water for on-board use. We request comment on the capabilities of marine vessels, especially ocean-going ships, to generate sufficient fresh water on-board to support the use of water-based NO_X control technologies. For vessels making shorter trips, we request comment on the costs associated with storing fresh water on board and replenishing the water supply when at port. We also request comment on the hardware and operating costs associated with this emission control technology.

3. Exhaust Gas Recirculation

Exhaust gas recirculation (EGR) is a strategy similar to water-based NO_X reduction approaches in that a non-combustible fluid (in this case exhaust gas) is added to the combustion process. The exhaust gas is inert and reduces peak combustion temperatures, where NO_X is formed, by slowing reaction rates and absorbing some of the heat generated during combustion. One study concluded that EGR could be used to achieve similar NO_X emission reductions as water emulsion.[80] However, due to the risk of carbon deposits and deterioration due to sulfuric acid in the exhaust gas when high sulfur fuel is used, any exhaust gases recirculated to the cylinder intake would have to be cleaned before being routed back into the cylinder. One method of cleaning the exhaust would be to use a seawater scrubber.[81] Another alternative is to use internal EGR where a portion of the exhaust gases is held in the cylinder after combustion based on the cylinder scavenging design.[82]

B. NO_X Aftertreatment

NO_X emissions can be reduced substantially using selective catalytic reduction (SCR), which is a commonly-used technology reducing NO_X emissions standards in diesel applications worldwide. Stationary power plants fueled with coal, diesel, and natural gas have used SCR for three decades as a means of controlling NO_X emissions. European heavy-duty truck manufacturers are using this technology to meet Euro 5 emissions limits and several heavy-duty truck engine manufacturers have indicated that they will use SCR technology to meet stringent U.S. NO_X limits beginning in 2010. Collaborative research and development activities between diesel engine manufacturers and SCR catalyst suppliers suggest that SCR is a mature, cost-effective solution for NO_X reduction on diesel engines.

SCR has also been demonstrated for use with marine diesel engines. More than 300 SCR systems have been installed on marine vessels, some of which have been in operation for more than 10 years and have accumulated 80,000 hours of operation.[83 84 85 86] These systems are used in a wide range of ship types including ferries, supply ships, ro ros (roll-on roll-off), tankers, container ships, icebreakers, cargo ships, workboats, cruise ships, and foreign navy vessels for both propulsion and auxiliary engines. These SCR units are being used successfully on slow and medium speed Category 3 propulsion engines and on Category 2 propulsion and auxiliary engines. The fuel used on ships with SCR systems ranges from low sulfur distillate fuel to high sulfur residual fuel. SCR is capable of reducing NO_X emissions in marine diesel exhaust by more than 90 percent and can have other benefits as well.[87 88 89] Fuel consumption improvements may also be gained with the use of an SCR system. By relying on the SCR unit for NO_X emissions control, the engine can be optimized for better fuel consumption, rather than for low NO_X emissions. When an oxidation catalyst is used in conjunction with the SCR unit, significant reductions in HC, CO, and

Combustion Engines Congress, 2004, Docket ID EPA–HQ–OAR–2007–0121–0005.

[78] Hagstrm, U., ''Humid Air Motor (HAM) and Selective Catalytic Reduction (SCR) Viking Line,'' presented by Viking Line at Swedish Maritime Administration Conference on Emission Abatement Technology on Ships, May 24–26, 2005, Docket ID EPA–HQ–OAR–2007–0121–0027.

[79] Koehler, H., ''Field Experience with Considerably Reduced NO_X and Smoke Emissions,'' MAN B&W, 2004, Docket ID EPA–HQ–OAR–2007–0121–0019.

[80] Aabo, K., Kjemtrup, N., ''Latest on Emission Control Water Emulsion and Exhaust Gas Re-Circulation,'' MAN B&W, CIMAC paper number 126, presented at International Council on Combustion Engines Congress, 2004, Docket ID EPA–HQ–OAR–2007–0121–0005.

[81] Henningsen, S., ''2007 Panel Discussion on Emission Reduction Solutions for Marine Vessels; Engine Technologies'' presentation by MAN B&W at the Clean Ships: Advanced Technology for Clean Air Conference, February 8, 2007, Docket ID EPA–HQ–OAR–2007–0121–0031.

[82] Weisser, G., ''Emission Reduction Solutions for Marine Vessels—Wartsila Perspective'' presentation by Wartsila at the Clean Ships: Advanced Technology for Clean Air Conference, February 8, 2007, Docket ID EPA–HQ–OAR–2007–0121–0032.

[83] ''DEC SCR Convertor System,'' Muenters, May 1, 2006, Docket ID EPA–HQ–OAR–2007–0121–0013.

[84] Hagström, U., ''Humid Air Motor (HAM) and Selective Catalytic Reduction (SCR),'' Viking Line, presented at Air Pollution from Ships, May 24–26, 2005, Docket ID EPA–HQ–OAR–2007–0121–0027.

[85] ''Reference List—$SINO_X$® Systems,'' Argillon, December 2006, Docket ID EPA–HQ–OAR–2007–0121–0035.

[86] ''Reference List January 2005 Marine Applications,'' Hug Engineering, January 2005, Docket ID EPA–HQ–OAR–2007–0121–0036.

[87] Heim, K., ''Future Emission Legislation and Reduction Possibilities,'' Wärtsilä, presented at CIMAC Circle 2006, September 28, 2006, Docket ID EPA–HQ–OAR–2007–0121–0017.

[88] Argillon, ''Exhaust Gas Aftertreatment Systems; SCR—The Most Effective Technology for NO_X Reduction,'' presented at Motor Ship Marine Propulsion Conference, May 7–8, 2003, Docket ID EPA–HQ–OAR–2007–0121–0010.

[89] Holmström, Per, ''Selective Catalytic Reduction,'' presentation by Munters at Clean Ships: Advanced Technology for Clean Air, February 7–9, 2007, Docket ID EPA–HQ–OAR–2007–0121–0013.

PM may also be achieved. The SCR unit attenuates sound, so it may use the space on the vessel that would normally hold a large muffler generally referred to as an exhaust gas silencer. To the extent that SCR has been used in additional marine applications, we request further information on the emission reductions that have been achieved. We also request comment on the durability, packaging, and cost of these systems.

An SCR catalyst reduces nitrogen oxides to elemental nitrogen (N_2) and water by using a small amount of ammonia (NH_3) as the reducing agent. The most-common method for supplying ammonia to the SCR catalyst is to inject an aqueous urea-water solution into the exhaust stream. In the presence of high-temperature exhaust gases (>200 °C), the urea in the injected solution hydrolyzes to form NH_3. The NH_3 is stored on the surface of the SCR catalyst where it is used to complete the NO_X reduction reaction. In theory, it is possible to achieve 100 percent NO_X conversion if the exhaust temperature is high enough and the catalyst is large enough. Low temperature NO_X conversion efficiency can be improved through use of an oxidation catalyst upstream of the SCR catalyst to promote the conversion of NO to NO_2. Because the reduction of NO_X can be rate limited by NO reductions, converting some of the NO to NO_2 also allows manufacturers to use a smaller reactor.

Manufacturers report minimum exhaust temperatures for SCR units to be in the range of 250 to 300 °C, depending on the catalyst system design and fuel sulfur level.[90 91 92] Below this temperature, the vanadium-oxide catalyst in the SCR unit would not be hot enough to efficiently reduce NO_X. With very low sulfur fuels, a highly reactive oxidation catalyst can be used upstream of the SCR reactor to convert NO to NO_2. NO_2 reacts in the SCR catalyst at lower temperatures than NO; therefore, the oxidation catalyst lowers the exhaust temperature at which the SCR unit is effective. However, as the sulfur concentration increases, a less reactive oxidation catalyst must be used to prevent excessive formation of sulfates and poisoning of the oxidation catalyst. When operating on marine distillate fuel with a sulfur level of 1,000 ppm, the minimum exhaust temperature for effective reductions through a current SCR system would be on the order of 270 °C. On typical heavy fuel oils, which have sulfur concentrations on the order of 2.5 percent, the exhaust temperature would need to be about 300°C due to high sulfur concentrations. We request comment on the relationship between SCR operating temperatures and the quality of the fuel used.

SCR can be operated in exhaust streams at or above 500 °C before heat-related degradation of the catalyst becomes significant. This maximum exhaust temperature is sufficient for use with Category 3 marine engines. Exhaust valve temperatures are generally maintained below 450°C to minimize high temperature corrosion and fouling caused by vanadium and sodium present in residual fuel.

Modern SCR systems should be able to achieve very high NO_X conversion for all operation covered by the E3 test cycle, which includes power levels from 25 to 100 percent. A properly designed system can generally maintain exhaust temperatures high enough at these power levels to ensure proper functioning of the improved SCR catalysts. However, exhaust temperatures at lower power levels on current vessels may be below the minimum temperature threshold for SCR systems, especially when operated on high sulfur fuels. We believe that it is important that NO_X emission control is achieved even at low power due to the concern that much of the engine operation that occurs near the shore may be at less than 25 percent power. As described in Section VII.A.2, we are considering the need for changes to the test cycle or other supplemental requirements to account for the fact that the current test cycle does not include any operation below 25 percent power. We request comment on engine power levels, and corresponding exhaust temperature profiles, when maneuvering, operating at low speeds, or during other operation near shore.

We believe there are several approaches that can be used to ensure that the exhaust temperature during low power operation is sufficiently high for the SCR unit to function properly. By positioning the SCR system ahead of the turbocharger, the heat to the SCR system can be maximized. This approach was used with vessels equipped with slow-speed engines that operated at low loads near the coast.[93] Exhaust temperatures could be increased by adjusting engine parameters, such as reduced charge air cooling and modified injection timing. In one case, SCR was used on a short passage car ferry which originally had exhaust temperatures below 200 °C when the engine was operated at low load.[94] When the SCR unit was installed, controls were placed on the intercooler in the air intake system. By reducing the cooling on the intake air, the exhaust temperature was increased to be within the operating range of the SCR unit, even during low power operation. In a ship using multiple propulsion engines, one or more engines could be shut down such that the remaining engine or engines are operating at higher power. Another approach to increase the exhaust temperature could be to use burner systems during low power operation. If commenters have additional information on using SCR at low power operation, we request that this information be submitted for our consideration as we continue developing proposed standards for Category 3 marine engines.

SCR grade urea is a widely used industrial chemical around the world. Although an infrastructure for widespread transportation, storage, and dispensing of SCR-grade urea does not currently exist in most places, we believe that it would develop as needed based on market forces. Concerning urea production capacity, the U.S. has more-than-sufficient capacity to meet the additional needs of the marine engines. Currently, the U.S. consumes 14.7 million tons of ammonia resources per year, and relies on imports for 41 percent of that total (of which, urea is the principal derivative). In 2005, domestic ammonia producers operated their plants at 66 percent of rated capacity, resulting in 4.5 million tons of reserve production capacity.[95] Thus we do not project that urea cost or supply will be an issue. As an alternative, one study looked at using hydrocarbons distilled from the marine fuel oil as a reductant for an SCR unit.[96] We request

90 Rasmussen, K., Ellegasrd, L., Hanafusa, M., Shimada, K., ''Large Scale SCR Application on Diesel Power Plant,'' CIMAC paper number 179, presented at International Council on Combustion Engines Congress, 2004, Docket ID EPA–HQ–OAR–2007–0121–0007.

91 ''Munters SCR Converter™ System,'' downloaded from *www.munters.com*, November 21, 2006, Docket ID EPA–HQ–OAR–2007–0121–0023.

92 Argillon, ''Exhaust Gas Aftertreatment Systems; SCR—The Most Effective Technology for NO_X Reduction,'' presented at Motor Ship Marine Propulsion Conference, May 7–8, 2003, Docket ID EPA–HQ–OAR–2007–0121–0010.

93 MAN B&W, ''Emission Control Two-Stroke Low-Speed Diesel Engines,'' December 1996, Docket ID EPA–HQ–OAR–2007–0121–0020.

94 ''NO_X Emissions from M/V Hamlet,'' Data provided to W. Charmley, U.S. EPA. by P. Holmström, DEC Marine, February 5, 2007, Docket ID EPA–HQ–OAR–2007–0121–0015.

95 U.S. Department of the Interior, ''Mineral Commodity Summaries 2006,'' page 118, U.S. Geological Survey, January 13, 2006, Docket ID EPA–HQ–OAR–2007–0121–0022.

96 Tokunaga, Y., Kiyotaki, G., ''Development of NO_X Reduction System for Marine Diesel Engines by SCR using Liquid Hydrocarbon Distilled from Fuel Oil as Reductant,'' CIMAC paper number 63,

comment on any issues related using urea, or any other reductant, on ships such as costs, on-board storage requirements, and supply infrastructure.

C. PM and SO_X Control

As discussed above, we are considering PM and SO_X emission control approaches based on both fuel sulfur limits and performance based requirements. This section discusses traditional in-cylinder emission controls, fuel quality, and exhaust gas scrubbing technology.

1. In-Cylinder Controls

For typical diesel engines operating on distillate fuel, particulate matter formation is primarily the result of incomplete combustion of the fuel and lube oil. The traditional in-cylinder technologies discussed above for NO_X emission control can be optimized for PM control while simultaneously reducing NO_X emissions. If aftertreatment, such as SCR, is used to control NO_X, then the in-cylinder technologies can be used primarily for PM reductions. However, the PM reduction through in-cylinder technologies is limited for engines operating on high-sulfur fuel because the majority of the PM emissions in this case are due to compounds in the fuel rather than due to incomplete combustion, as discussed below.

2. Fuel Quality

The majority of Category 3 engines are designed to run on residual fuel which has the highest viscosity and lowest price of the petroleum fuel grades. Residual fuels are known by several names including heavy fuel oil (HFO), bunker C fuel, and marine fuel oil. This fuel is made from the very end products of the oil refining process, formulated from residues remaining in the primary distilling stages of the refining process. It has high content of ash, metals, nitrogen, and sulfur that increase emissions of exhaust PM pollutants. Typical residual fuel contains about 2.7 percent sulfur, but may have a sulfur content as high as 4.5 percent.

When a diesel engine is operating on very low sulfur distillate fuel, 80 to 90 percent of the PM in the exhaust is unburned hydrocarbons from the fuel and lubricating oil and carbon soot. When residual fuel is used, only about 25 to 35 percent of the PM from the engine is made up of unburned hydrocarbon compounds.[97] [98] [99] In this case, the majority of the PM from the engine is made up of sulfur, metal, and ash components originating from the fuel itself. On a mass basis, the vast majority of this fuel-based PM is due to the sulfur which oxidizes in the combustion process and associates with water to form an aqueous solution of sulfuric acid, known as sulfate PM. Data suggest that about two percent of the sulfur in the fuel is converted directly to sulfate PM.[100] [101] The rest of the sulfur in the fuel forms SO_X emissions. These SO_X emissions lead to indirect PM formation in the atmosphere.

We believe that substantial PM and SO_X reductions could be achieved through the use of lower sulfur fuel. Using a residual fuel with a lower sulfur content would reduce the fraction of PM from sulfate formation. One study showed a decrease of PM emissions from more than 1.0 g/kW-hr on 2.4 percent sulfur fuel to less than 0.5 g/kW-hr with 0.8 percent sulfur fuel for a medium-speed generator engine on a ship.[102] Using distillate fuel would likely have further reduced sulfur-based emissions and PM emissions from ash and metals. Another study compared PM emissions from a large 2-stroke marine engine on both low sulfur residual fuel oil and marine distillate oil and reported about a 70 percent reduction in PM.[103] The simpler molecular structure of distillate fuel may result in more complete combustion and reduced levels of carbonaceous PM (soot and heavy hydrocarbons). Because SO_X emissions are directly related to the concentration of sulfur in the fuel, a given percent reduction in sulfur in the fuel would be expected to result in about the same percent reduction in SO_X emissions from the engine. We request comment on the potential PM and SO_X emission reductions that could be achieved through the use of lower sulfur residual fuel or through the use of distillate fuel in Category 3 marine engines.

In general, engines that are designed to operate on residual fuel are capable of operating on distillate fuel. For example, if the engine is to be shut down for maintenance, distillate fuel is typically used to flush out the fuel system. There are some issues that would need to be addressed for operating engines on distillate fuel that were designed primarily for use on residual fuel. Switching to distillate fuel requires 20 to 60 minutes, depending on how slowly the operator wants to cool the fuel temperatures. According to engine manufacturers, switching from a heated residual fuel to an unheated distillate too quickly could cause damage to fuel pumps. These fuel pumps would need to be designed to operate on both fuels if a fuel-switching strategy were employed. Separate fuel tanks would be needed for distillate fuel with sufficient capacity for potentially extended operation on this fuel. It is common for ships to have several fuel tanks today to accommodate the variety in different grades of residual fuel which may be incompatible with each other and, therefore, require segregation. Also, different lubricating oil is used with each fuel type. We believe that properly designed ships would be able to operate on distillate fuel either under a fuel-switching strategy or for extended use. We request comment on the practical implications of operating ships on either lower sulfur residual or distillate fuel for extended use.

Fuel quality may also affect NO_X emissions. Residual fuels have nitrogen bound into the fuel at a concentration on the order of 0.3 to 0.4 weight percent. In contrast, marine distillate fuel has about a 0.02 to 0.06 weight percent concentration of nitrogen in the fuel. Approximately half of nitrogen in the fuel will oxidize to form NO_X in a marine diesel engine.[104] In addition, the ignition quality of the fuel may be worse for residual fuel than for distillate fuel which can affect NO_X emissions. These effects are reflected in the MARPOL NO_X technical code which allows an

presented at International Council on Combustion Engines Congress, 2004, Docket ID EPA–HQ–OAR–2007–0121–0002.

[97] Paro, D., ''Effective, Evolving, and Envisaged Emission Control Technologies for Marine Propulsion Engines,'' presentation from Wartsila to EPA on September 6, 2001, Docket ID EPA–HQ–OAR–2007–0121–0028.

[98] Koehler, H., ''Field Experience with Considerably Reduced NO_X and Smoke Emissions,'' MAN B&W, 2004, Docket ID EPA–HQ–OAR–2007–0121–0019.

[99] Heim, K., ''Future Emission Legislation and Reduction Possibilities,'' presentation by Wartsila at the CIMAC Circle 2006, September 28, 2006, Docket ID EPA–HQ–OAR–2007–0121–0017.

[100] ''Emission Factors for Compression Ignition Nonroad Engines Operated on No. 2 Highway and Nonroad Diesel Fuel,'' U.S. EPA, EPA420–R–98–001, March 1998, Docket ID EPA–HQ–OAR–2007–0121–0025.

[101] Lyyranen, J., Jokiniemi, J., Kauppinen, E., Joutsensaari, J., ''Aerosol Characterization in Medium-Speed Diesel Engines Operating with Heavy Fuel Oils,'' Aerosol Science Vol. 30, No. 6, pp. 771–784, 1999, Docket ID EPA–HQ–OAR–2007–0121–0009.

[102] Maeda, K., Takasaki, K., Masuda, K., Tsuda, M., Yasunari, M., ''Measurement of PM Emission from Marine Diesel Engines,'' CIMAC paper number 107 presented at International Council on Combustion Engines Congress, 2004, Docket ID EPA–HQ–OAR–2007–0121–0004.

[103] Kasper, A., Aufdenblatten, S., Forss, A., Mohr, M., Burtscher, H., ''Particulate Emissions from a Low-Speed Marine Diesel Engine,'' Aerosol Science and Technology, 41:24–32, 2007.

[104] Takasaki, K., Tayama, K., Tanaka, H., Baba, S., Tajima, H., Strom, A., ''NO_X Emission from Bunker Fuel Combustion,'' CIMAC paper number 87, presented at International Council on Combustion Engines Congress, 2004, Docket ID EPA–HQ–OAR–2007–0121–0003.

upward adjustment of 10 percent for NO_X, under certain circumstances, when the engine is tested on residual fuel. We request comment on the effect of using residual fuel on NO_X emissions, both due to nitrogen in the fuel and any impacts of fuel quality on ignition-delay or other combustion characteristics.

There are several types of processes refineries use to remove sulfur from fuels. Traditional sulfur removal technologies include installing a hydrocracker upstream, or a hydrotreater upstream or downstream, of the fluidized catalytic cracker (FCC) unit. Due to high refinery production costs, it is not likely that much new volume of residual fuel will be desulfurized to create 1,000 ppm heavy fuel oil. It is more likely that additional distillate fuel may be produced by cracking existing residual fuels or that blends of high and low sulfur fuels will be used. Some existing low sulfur residual fuel is already produced, though the volume is probably insufficient to fully meet fuel volume requirements for both ships and land-based applications subject to local sulfur emission requirements. We request comment on the availability of low sulfur marine fuels.

3. Exhaust Gas Scrubbers

Another approach to reduce PM and SO_X emissions is to use seawater scrubbers. Seawater scrubbers are an aftertreatment technology that uses the seawater's ability to absorb SO_2. In the scrubber, the exhaust gases are brought into contact with seawater. The SO_2 in the exhaust reacts with oxygen to produce sulfur trioxide that subsequently reacts with water to yield sulfuric acid. The sulfuric acid in the water then reacts with carbonate (and other salts) in the seawater to form sulfates which may be removed from the exhaust. The carbonate also directionally neutralizes the pH of the sulfuric acid.

A scrubber system does not necessarily need to use sea water. An alternative approach is to circulate fresh water through the scrubber system. In this design, the pH of the wash water is monitored and additional caustic solution is added as necessary. If the pH becomes too low, the water will not absorb any further sulfur. During typical operation, a small amount of wash water is bled out of the system and fresh water is added to maintain volume. This prevents excessive build-up of contaminants in the wash water.

Water may be sprayed into the exhaust stream, or the exhaust gasses may be routed through a water bath. As the cooled exhaust gas rises out the stack, demisters are used to separate water droplets that may be entrained in the exhaust. The cleaned exhaust passes out of the scrubber through the top while the water, containing sulfates, is drained out through the bottom. Recent demonstration projects have shown scrubbers are capable of reducing SO_X emissions on the order of 95 percent.[105] Today, exhaust gas silencers are used on ships to muffle noise from the exhaust. Seawater scrubbers would act as mufflers making the exhaust gas silencers unnecessary. New seawater scrubber designs are not much larger than exhaust gas silencers already used on ships, and could be packaged in the space formerly used by an exhaust gas silencer.[106] We request comment on further experience with seawater scrubbers and on the practical issues related to installing scrubbers on ships, including space constraints and costs.

Exhaust gas scrubbers can achieve reductions in particulate matter as well. By removing sulfur from the exhaust, the scrubber removes most of the direct sulfate PM. As discussed above, sulfates are a large portion of the PM from ships operating on high sulfur fuels. By reducing the SO_X emissions, the scrubber will also control much of the secondary PM formed in the atmosphere from SO_X emissions.

Simply mixing alkaline water in the exhaust does not necessarily remove much of the carbonaceous PM, ash, or metals in the exhaust. While SO_2 associates with the wash water, particles can only be washed out of the exhaust through direct contact with the water. In simple scrubber designs, much of the mass of particles can hide in gas bubbles and escape out the exhaust. Manufacturers have been improving their scrubber designs to address carbonaceous soot and other fine particles. Finer water sprays, longer mixing times, and turbulent action would be expected to directionally reduce PM emissions through contact impactions. One scrubber design uses an electric charge on the water to attract particles in the exhaust to the water. Two chambers are used so that both a positive and a negative charge can be used to attract both negatively-charged and positively-charged particles. The manufacturer reports an efficiency of more than 99 percent for the removal for particulate matter and condensable organics in diesel exhaust.[107] Although exhaust gas scrubbers are only used in a few demonstration vessels today, this technology is widely used in land-based applications. We request comment on how scrubber design impacts the amount of PM that is removed from the exhaust.

It may be possible to achieve NO_X reductions through the use of seawater scrubbers. In a typical scrubber, the water-soluble fraction of NO_X (NO_2) can combine with the water to form nitrates which are scrubbed out of the exhaust. However, because NO_2 makes up only a small fraction of total NO_X, this results in less than a 10 percent reduction in NO_X emissions exhausted to atmosphere.[108] Seawater electrolysis systems have been developed which increase the adsorption rate of NO_X in the water by oxidizing NO to NO_2, which is water-soluble.[109] One study used electrolysis in an experimental scrubbing system to remove 90 percent of the NO and nearly all of the NO_2 in the feed gas.[110] We request comment on the feasibility of achieving significant NO_X reductions from Category 3 marine engines through the use of seawater scrubbers. We also request comment on the impact of this technology on nitrate loading and eutrophication of surrounding waters.

Water-soluble components of the exhaust gas such as SO_2, SO_3, and NO_2 form sulfates and nitrates that are dumped overboard in the discharge water. Scrubber wash water also includes suspended solids, heavy metals, hydrocarbons and PAHs. Before the scrubber water is discharged, it may be processed to remove solid particles through several approaches. Heavier particles may be trapped in a settling or sludge tank for disposal. The removal process may include cyclone technology similar to that used to separate water from residual fuel prior to delivery to the engine. However, depending on

[105] Skawinski, C., ''Seawater Scrubbing Advantage,'' Presentation by Marine Exhaust Solutions at the Conference for Emission Abatement Technology on Ships held by the Swedish Maritime Administration, May 24–26, 2005, Docket ID EPA–HQ–OAR–2007–0121–0021.

[106] ''Krystallon Seawater Scrubber,'' downloaded from *http://www.krystallon.com* on February 14, 2007, Docket ID EPA–HQ–OAR–2007–0121–0018.

[107] ''Cloud Chamber Scrubber Performance Results for Diesel Exhaust,'' Tri-Mer Corporation, April 14, 2005, Docket ID EPA–HQ–OAR–2007–0121–0026.

[108] Skawinski, C., ''Seawater Scrubbing Advantage,'' Presentation by Marine Exhaust Solutions at the Conference for Emission Abatement Technology on Ships held by the Swedish Maritime Administration, May 24–26, 2005, Docket ID EPA–HQ–OAR–2007–0121–0021.

[109] An, S., Nishida, O., ''Marine Air Pollution Control System Development Applying Seawater and Electrolyte,'' SAE Paper 2002–01–2295, July 2002, Docket ID EPA–HQ–OAR–2007–0121–0024.

[110] Houng-Soo, K., ''Development of Diesel Engine Emission Control System on NO_X and SO_X by Seawater Electrolysis,'' CIMAC paper number 25 presented at International Council on Combustion Engines Congress, 2004, Docket ID EPA–HQ–OAR–2007–0121–0001.

particle size distribution and particle density, settling tanks and hydrodynamic separation may not effectively remove all suspended solids. Other approaches include filtration and flocculation techniques. Flocculation, which is used in many waste water treatment plants, refers to adding a chemical agent to the water that will cause the fine particles to aggregate so that they may be filtered out. Sludge separated from the scrubber water would be stored on board until it is disposed of at proper facilities. We request comment on appropriate waste discharge limits for scrubber water and how these limits should be defined. We are concerned that if limits are based on the concentration of the pollutants in the water, then the standards could be met simply by diluting the effluent before it is discharged. Although diluting the discharge water may have some local benefits near the vessel, it would not change the total pollutant load on a given body of water. We request comment on basing limits for waste water pollutants on engine load, similar to exhaust emission standards.

VII. Certification and Compliance

In general, we expect to retain the certification and compliance provisions finalized with the Tier 1 standards. These include testing, durability, labeling, maintenance, prohibited acts, etc. However, we believe additional testing and compliance provisions will be necessary for new standards requiring more advanced technology and more challenging calibrations. These changes, as well as other modifications to our certification and compliance provisions, are discussed below.

A. Testing

1. PM Sampling

In the past, there has been some concern regarding the use of older PM measurement procedures with high sulfur residual fuels. The primary issue of concern was variability of the PM measurement, which was strongly influenced by the amount of water bound to sulfur. However, we believe improvements in PM measurement procedures, such as those specified in 40 CFR 1065, have addressed these issues of measurement variability. The U.S. government recently submitted proposed procedures for PM measurement to IMO.[111] We request comment on these procedures for accurately measuring PM emissions from Category 3 marine engines operating on residual fuel.

2. Low Power Operation

We are concerned about emission control performance when the engine is operated at low power. Category 3 engines operate at relatively low power levels when they are operating in port areas. Ship pilots generally operate engines at reduced power for several miles to approach a port, with even lower power levels very close to shore. The ISO E3 and E2 test cycles are used for emission testing of propulsion marine engines. These test cycles are heavily weighted towards high power. Therefore, it is very possible that manufacturers could meet the cycle-weighted average emission standards without significantly reducing emissions at low-power modes. Because low power operation is more prevalent for propulsion engines when they operate close to commercial ports, it is important that the emission control strategy be effective at low power operation to maximize on-shore emission benefits. This issue would generally not apply to vessels that rely on multiple engines providing electric-drive propulsion, because these engines can be shut down as needed to maintain the desired engine loading and therefore may not operate at low power settings. We request comment on the need for addressing emissions at low power operation and whether and how the test procedure should be changed to accommodate this operation. See section VI.B for additional discussion of low power NO_X emissions for engines equipped with exhaust aftertreatment.

3. Test Fuel

Appropriate test procedures need to represent in-use operating conditions as much as possible, including specification of test fuels consistent with the fuels that compliant engines will use over their lifetimes. For the Tier 1 standards, we allow engine testing using distillate fuel, even though vessels with Category 3 marine engines primarily use the significantly less expensive residual fuel. This provision is consistent with the specifications of the NO_X Technical Code. Also, most manufacturers have test facilities designed to test engines using distillate fuel. Distillate fuel is easier to test with because it does not need to be heated to remain a liquid and manufacturers have indicated that it is difficult to obtain local permits for testing with residual fuel. However, we believe it is important to specify a test fuel that is consistent with the in-use fuel with which engines will operate in service. This is especially true for PM measurements. We request comment on the appropriate test fuel for emission testing and if this fuel should be representative on the fuel on which a specific engine is designed to operate.

For any NO_X measurements from engines operating on residual fuel we recognize that there may be emission-related effects due to fuel quality, specifically fuel-bound nitrogen. If the standards were based on distillate fuel, we would consider a NO_X correction factor to account for the impact of fuel quality when testing on residual fuel. This correction would be useful because of the high levels of nitrogen contained in residual fuel. Such a correction factor would likely involve measuring fuel-bound nitrogen and correcting measured values to what would occur with a nitrogen concentration of 0.4 weight percent. This corrected value would be used to determine whether the engine meets emission standards or not. We request comment on the need for corrections and, if so, how the appropriate corrections would be developed.

B. On-Off Technologies

One of the features of the emission control technologies that could be used to achieve significant NO_X and PM reductions from C3 engines is that they are not integral to the engine and the engine can be operated without them. Aftertreatment systems such as SCR or emission scrubbing, or the use of lower sulfur fuel, require a positive action on the part of the ship owner to make sure the emission control system is in operation or that the appropriate fuel is used. These types of technologies are often called ''on-off'' technologies.

The increased operating costs of such controls associated with urea or other catalysts or with distillate usage suggest that it may be reasonable to allow these systems to be turned off while a ship is operated on the open ocean, far away from sensitive areas that are affected by ship emissions. In other words, EPA could elect to set geographically-based NO_X and PM standards, with one limit that would apply when ships are operated within a specified distance from U.S. coasts, and another that would apply when ships are operated outside those limits.

If EPA were to adopt such an approach, we would need to determine the areas in which ships would have to comply with the standards. We are currently exploring this issue through the air quality modeling for our proposed standards. There are other

[111] Measurement Method for Particulate Matter Emitted from Marine Engines, submitted by the United States. BLG–WGAP 2, October 2007. Intersessional Meeting of the BLG Working Group on Air Pollution, 2nd Session.

issues associated with such an approach, including: The technological feasibility of by-pass systems and their impacts on the emission control systems when they are not in use; the level of the standard that would apply when the system is turned off; and how compliance would be demonstrated. There may also be additional certification requirements for ships equipped with such systems.

We request comment on all aspects of this alternative, especially with regard to how such systems could be designed to ensure no loss of emission reductions.

C. Parameter Adjustment

Given the broad range of ignition properties for in-use residual fuels, we expect that our in-use adjustment allowance for Category 3 engines would result in a broad range of adjustment. We are therefore considering a requirement for operators to perform a simple field measurement test to confirm emissions after parameter adjustments or maintenance operations, using onboard emission measurement systems with electronic-logging equipment. We expect this issue will be equally important for more advanced engines that rely on water injection or aftertreatment for emission reductions. Onboard verification systems could add significant assurance that engines have properly operating emission controls.

We envision a simpler measurement system than the type specified in Chapter 6 of the NO_X Technical Code. As we described in the 2003 final rule, we believe that onboard emission equipment that is relatively inexpensive and easy to use could verify that an engine is properly adjusted and is operating within the engine manufacturer's specifications. Note that Annex VI includes specifications allowing operators to choose to verify emissions through onboard testing, which suggests that Annex VI also envisioned that onboard measurement systems could be of value to operators. We request comment on requiring onboard verification systems on ships with Category 3 marine engines and on a description of such a system.

D. Certification of Existing Engines

While we normally require certification only for newly built engines, we are considering emission standards that would apply to remanufactured engines in the existing fleet. This leads to questions about how one would certify the modified engines. We are considering adoption of one or more of the following simplified certification procedures for in-use engines:

• Basing certification for any engine on a pre-existing certificate if the engine is modified to be the same as a later engine that is already certified to the Tier 1 NO_X standard.

• Testing in-use engines using portable emission measurement equipment, with appropriate consideration for any necessary deviations in the engine test cycle.

• Broadening the engine family concept for in-use engines to reduce the amount of testing necessary to certify a range of engines. This would require the same or similar hardware and calibration requirements to ensure that a single test engine can properly represent all the engines in the broader engine family.

• Developing alternatives to the NO_X Technical File [112] to simplify the certification burdens for existing vessels while ensuring that the modified engines and emission components may be appropriately surveyed and inspected.

We request comment on the best approach for ensuring compliance from existing engines. We also request comment on the simplified certification procedures listed above.

E. Other Compliance Issues

We intend to apply the same exemptions to any new tier of Category 3 marine diesel engine standards as currently apply under our Tier 1 program. These exemptions, including the national security exemption, are set out in 40 CFR part 94, subpart J. We will also consider whether to include engines on foreign vessels in the program and whether we should also adopt standards for non-diesel engines such as gas turbine engines.

1. Engines on Foreign-Flagged Vessels

Our current federal marine diesel engine standards do not apply to Category 1, 2, and 3 marine diesel engines installed on foreign-flagged vessels. In our 2003 Final Rule we acknowledged the contribution of engines on foreign-flagged vessels to U.S. air pollution but did not apply federal standards to foreign vessels (see 68 FR 9759, February 28, 2003). This section summarizes the discussion from that 2003 Final Rule. We will continue to evaluate this issue as we develop the proposal for this rule.

Section 213 of the Clean Air Act (42 U.S.C. 7547), authorizes regulation of ''new nonroad engine'' and ''new nonroad vehicle.'' However, Title II of the Clean Air Act does not define either ''new nonroad engine'' or ''new nonroad vehicle.'' Section 216 defines a ''new motor vehicle engine'' to include an engine that has been ''imported.'' EPA modeled the current regulatory definitions of ''new nonroad engine'' and ''new marine engine'' at 40 CFR 89.2 and 40 CFR 94.2, respectively, after the statutory definitions of ''new motor vehicle engine'' and ''new motor vehicle.'' This was a reasonable exercise of the discretion provided to EPA by the Clean Air Act to interpret ''new nonroad engine'' or ''new nonroad vehicle.'' See *Engine Manufacturers Assoc.* v. *EPA,* 88 F.3d 1075, 1087 (DC Cir. 1996).

The 1999 marine diesel engine rule did not apply to marine engines on foreign vessels. 40 CFR 94.1(b)(3). At that time, we concluded that engines installed on vessels flagged or registered in another country, that come into the United States temporarily, will not be subject to the emission standards. At that time, we believed that they were not considered imported under the U.S. customs law. As a result, we did not apply the standards adopted in that rule to those vessels (64 FR 73300, Dec. 29, 1999).

The May 29, 2002 proposed rule for Category 3 marine diesel engines solicited comment on whether to exercise our discretion and modify the definition of a ''new marine engine'' to find that engine emission standards apply to foreign vessels that enter U.S. ports. However, in the February 28, 2003 final rule we determined that we did not need to determine whether we have the discretion to interpret ''new'' nonroad engine or vessel in such a manner.

Foreign vessels were expected to comply with the MARPOL standards whether or not they were also subject to the equivalent Clean Air Act standards being adopted in that final rule. Consequently, we concluded that no significant emission reductions would be achieved by treating foreign vessels as ''new'' for purposes of the Tier 1 standards and there would be no significant loss in emission reductions by not including them. Therefore, we did not include foreign engines and vessels in our 2003 rulemaking and we did not revise the definition of ''new marine engine'' at that time.

[112] The NO_X Technical File, required pursuant to Section 2.4 of the Technical Code on Control of Emissions of Nitrogen Oxides from Marine Diesel Engines, is a record containing details of engine parameters, including components and settings, which may influence the NO_X emissions of the engine. The NO_X Technical File also contains a description of onboard NO_X verification procedures required for engine surveys. The NO_X Technical File is developed by the engine manufacturer and must be approved by the authority issuing the engine certificate.

In this rule we will evaluate under what circumstances we may and should define new nonroad engine and vessel to include foreign engines and vessels. As part of that evaluation, we will also assess the progress made by the international community toward the adoption of new more stringent international consensus standards that reflect advanced emission-control technologies.

2. Non-Diesel Engines

Gas turbine engines are internal combustion engines that can operate using diesel fuel, residual fuel, or natural gas, but do not operate on a compression-ignition or other reciprocating engine cycle. Power is extracted from the combustion gas using a rotating turbine rather than reciprocating pistons. While gas turbine engines are used primarily in naval ships, a small number are being used in commercial ships. In addition, we have received indication that their use is growing in some applications such as cruise ships and liquid natural gas carriers. As we develop the proposal for this rule we will consider whether it is appropriate to regulate emissions from gas turbine engines and, if so, whether special provisions would be needed for testing and certifying turbine engines. For example, since turbine engines have no cylinders, we may need to address how to apply any regulatory provisions that depend on a specified value for per-cylinder displacement. We would welcome any emissions information that is available for turbine engines.

Marine engines have been developed that can operate either on natural gas or a dual-fuel.[113] In a dual-fuel application, a mixture of marine diesel oil and natural gas is used for the main engine that provides a means to comply with the low-sulfur fuel requirement. Natural gas engines are especially attractive to vessels that carry a cargo of liquefied petroleum gas due to the readily available fuel supply. Natural gas powered engines are similar to Category 3 marine engines operating on traditional diesel fuels, and we would consider including these engines in this rulemaking.

We request comment on fuels and engine types that we should consider in the scope of this rulemaking. We also request comments on test procedure or other compliance issues that would need to be considered for these fuels and engines.

VIII. Potential Regulatory Impacts

A. Emission Inventory

The inventory contribution of Category 3 engines consists of two parts: emissions that occur in port areas and emissions that occur at various distances from the coast while vessels are underway. Although the issue of emissions transport is common to all of our air pollution control programs, these underway emissions suggest that Category 3 emissions are different from emissions from other mobile sources and result in at least two implications for the analysis we will perform for our proposal. First, the definition of the inventory modeling domain becomes important. In the inventory analysis described below we use a distance of 200 nautical miles from shore (see Figure VIII–1 below and associated text). This distance is reasonable based on both particle dynamics[114] and results from air quality modeling for other programs which has shown that PM and NO_X emissions can be transported significant distances.[115] Second, it will be important to analyze the air quality impacts of these emissions at various distances to determine how offshore emissions affect air quality both along the coasts and inland. We will use the CMAQ model, modified to accommodate at-sea emissions, to track the impacts of underway emissions and estimate the air quality benefits of the proposal.

This section contains our updated inventory estimates for Category 3 marine engines in the 200 nautical mile domain and a brief discussion of our inventory estimation methodology.

1. Estimated Inventory Contribution

Category 3 marine engines contribute to the formation of ground level ozone and concentrations of fine particles in the ambient atmosphere. Based on our current emission inventory analysis of U.S. and foreign-flag vessels, we estimate that these engines contributed nearly 6 percent of mobile source NO_X, over 10 percent of mobile source $PM_{2.5}$, and about 40 percent of mobile source SO_2 in 2001. We estimate that their contribution will increase to about 34 percent of mobile source NO_X, 45 percent of mobile source $PM_{2.5}$, and 94 percent of mobile source SO_2 by 2030 without further controls on these engines. Our current estimates for NO_X, $PM_{2.5}$, SO_2 inventories are set out in Tables VIII–1 through VIII–3. The inventory projections for 2020 and 2030 include the impact of existing emission mobile source and stationary source control programs previously adopted by EPA (excluding the recently adopted MSAT regulations, signed on February 9, 2007 which will have an impact on future highway non-diesel $PM_{2.5}$ levels).

TABLE VIII–1.—50-STATE ANNUAL NO_X BASELINE EMISSION LEVELS FOR MOBILE AND OTHER SOURCE CATEGORIES

Category	2001 [a]			2020			2030		
	Short tons	Percent of mobile source	Percent of total	Short tons	Percent of mobile source	Percent of total	Short tons	Percent of mobile source	Percent of total
Commercial Marine (C3) [b]	745,224	5.7	3.3	1,368,420	22.8	11.3	2,023,974	33.7	16.7
Locomotive	1,118,786	8.6	5.0	860,474	14.3	7.1	854,226	14.1	7.0
Recreational Marine Diesel	40,437	0.3	0.2	45,477	0.8	0.4	48,102	0.8	0.4
Commercial Marine (C1 & C2)	834,025	6.4	3.7	676,154	11.3	5.6	680,025	11.3	5.6
Land-Based Nonroad Diesel	1,548,236	11.9	6.9	678,377	11.3	5.6	434,466	7.2	3.6
Small Nonroad SI	114,319	0.9	0.5	114,881	1.9	0.9	133,197	2.2	1.1
Recreational Marine SI	44,732	0.3	0.2	86,908	1.4	0.7	96,143	1.6	0.8
SI Recreational Vehicles	5,488	0.0	0.0	17,496	0.3	0.1	20,136	0.3	0.2
Large Nonroad SI (25hp)	321,098	2.5	1.4	46,319	0.8	0.4	46,253	0.8	0.4
Aircraft	83,764	0.6	0.4	105,133	1.7	0.9	118,740	2.0	1.0
Total Off Highway	4,856,109	37.5	21.8	3,999,640	66.6	33.0	4,455,262	74.2	36.8
Highway Diesel	3,750,886	28.9	16.8	646,961	10.8	5.3	260,915	4.3	2.2
Highway non-diesel	4,354,430	33.6	19.5	1,361,276	22.7	11.2	1,289,780	21.5	10.6
Total Highway	8,105,316	62.5	36.3	2,008,237	33.4	16.6	1,550,695	25.8	12.8

[113] Nylund, I., ''Status and Potentials of the Gas Engines,'' Wartsila, CIMAC paper number 163, presented at International Council on Combustion Engines Congress, 2004, Docket ID EPA–HQ–OAR–2007–0121–0006.

[114] U.S. EPA. Air Quality Criteria for Particulate Matter (October 2004). U.S. Environmental Protection Agency, Washington, DC, EPA 600/P–99/002aF-bF, 2004.

[115] U.S. EPA Technical Support Document for the Final Clean Air Interstate Rule Air Quality Modeling (March 2005) U.S. Environmental Protection Agency, Washington, DC.

TABLE VIII–1.—50-STATE ANNUAL NO_X BASELINE EMISSION LEVELS FOR MOBILE AND OTHER SOURCE CATEGORIES—Continued

Category	2001 [a]			2020			2030		
	Short tons	Percent of mobile source	Percent of total	Short tons	Percent of mobile source	Percent of total	Short tons	Percent of mobile source	Percent of total
Total Mobile Sources	12,961,425	100	58.1	6,007,877	100	49.6	6,005,957	100	49.6
Stationary Point & Area Sources	9,355,659	....	41.9	6,111,866	....	50.4	6,111,866	....	50.4
Total Man-Made Sources	22,317,084	....	100	12,119,743	....	100	12,117,823	....	100

[a] The locomotive, commercial marine (C1 & C2), and recreational marine diesel estimates are for calendar year 2002.
[b] This category includes emissions from Category 3 (C3) propulsion engines and C2/3 auxiliary engines used on ocean-going vessels.

TABLE VIII–2.—50-STATE ANNUAL $PM_{2.5}$ BASELINE EMISSION LEVELS FOR MOBILE AND OTHER SOURCE CATEGORIES

Category	2001 [a]			2020			2030		
	Short tons	Percent of mobile source	Percent of total	Short tons	Percent of mobile source	Percent of total	Short tons	Percent of mobile source	Percent of total
Commercial Marine (C3) [b]	54,667	10.9	2.2	110,993	33.6	5.2	166,161	45.4	7.6
Locomotive	29,660	5.9	1.2	26,301	8.0	1.2	25,109	6.8	1.1
Recreational Marine Diesel	1,096	0.2	0.0	1,006	0.3	0.0	1,140	0.3	0.1
Commercial Marine (C1 & C2)	28,730	5.7	1.2	22,236	6.7	1.0	23,760	6.5	1.1
Land-Based Nonroad Diesel	164,180	32.8	6.7	46,075	13.9	2.1	17,934	4.9	0.8
Small Nonroad SI	25,466	5.1	1.0	32,904	10.0	1.5	37,878	10.3	1.7
Recreational Marine SI	16,837	3.4	0.7	6,367	1.9	0.3	6,163	1.7	0.3
SI Recreational Vehicles	12,301	2.5	0.5	11,773	3.6	0.5	9,953	2.7	0.5
Large Nonroad SI (>25hp)	1,610	0.3	0.1	2,421	0.7	0.1	2,844	0.8	0.1
Aircraft	5,664	1.1	0.2	7,044	2.1	0.3	8,569	2.3	0.4
Total Off Highway	340,211	68.0	13.8	267,120	80.9	12.4	299,511	81.8	13.7
Highway Diesel	109,952	22.0	4.5	15,800	4.8	0.7	10,072	2.7	0.5
Highway non-diesel	50,277	10.0	2.0	47,354	14.3	2.2	56,734	15.5	2.6
Total Highway	160,229	32.0	6.5	63,154	19.1	2.9	66,806	18.2	3.1
Total Mobile Sources	500,440	100	20.3	330,274	100	15.4	366,317	100	16.8
Stationary Point & Area Sources	1,963,264	....	79.7	1,817,722	....	84.6	1,817,722	....	83.2
Total Man-Made Sources	2,463,704	....	100	2,147,996	....	100	2,184,039	....	100

[a] The locomotive, commercial marine (C1 & C2), and recreational marine diesel estimates are for calendar year 2002.
[b] This category includes emissions from Category 3 (C3) propulsion engines and C2/3 auxiliary engines used on ocean-going vessels.

TABLE VIII–3.—50-STATE ANNUAL SO_2 BASELINE EMISSION LEVELS FOR MOBILE AND OTHER SOURCE CATEGORIES

Category	2001 [a]			2020			2030		
	Short tons	Percent of mobile source	Percent of total	Short tons	Percent of mobile source	Percent of total	Short tons	Percent of mobile source	Percent of total
Commercial Marine (C3) [b]	457,948	42.4	2.8	932,820	93.2	10.1	1,398,598	94.5	14.4
Locomotive	76,727	7.1	0.5	400	0.0	0.0	468	0.0	0.0
Recreational Marine Diesel	5,145	0.5	0.0	162	0.0	0.0	192	0.0	0.0
Commercial Marine (C1 & C2)	80,353	7.4	0.5	3,104	0.3	0.0	3,586	0.3	0.0
Land-Based Nonroad Diesel	167,615	15.5	1.0	999	0.1	0.0	1,078	0.1	0.0
Small Nonroad SI	6,710	0.6	0.0	8,797	0.9	0.1	10,196	0.7	0.1
Recreational Marine SI	2,739	0.3	0.0	2,963	0.3	0.0	3,142	0.2	0.0
SI Recreational Vehicles	1,241	0.1	0.0	2,643	0.3	0.0	2,784	0.2	0.0
Large Nonroad SI (25hp)	925	0.1	0.0	905	0.1	0.0	1,020	0.1	0.0
Aircraft	7,890	0.7	0.0	9,907	1.0	0.1	11,137	0.8	0.1
Total Off Highway	807,293	74.7	5.0	962,700	96.1	10.4	1,432,202	96.8	14.8
Highway Diesel	103,632	9.6	0.6	3,443	0.3	0.0	4,453	0.3	0.0
Highway non-diesel	169,125	15.7	1.0	35,195	3.5	0.4	42,709	2.9	0.4
Total Highway	272,757	25.3	1.7	38,638	3.9	0.4	47,162	3.2	0.5
Total Mobile Sources	1,080,050	100	6.7	1,001,338	100	10.9	1,479,364	100	15.3
Stationary Point & Area Sources	15,057,420	....	93.3	8,215,016	....	89.1	8,215,016	....	84.7
Total Man-Made Sources	16,137,470	....	100	9,216,354	....	100	9,694,380	....	100

[a] The locomotive, commercial marine (C1 & C2), and recreational marine diesel estimates are for calendar year 2002.
[b] This category includes emissions from Category 3 (C3) propulsion engines and C2/3 auxiliary engines used on ocean-going vessels.

The United States is actively engaged in international trade and is frequently visited by ocean-going marine vessels. As shown in Figure II–1, the ports which accommodate these vessels are located along the entire coastline of the United States. Commercial marine vessels, powered by Category 3 marine engines, contribute significantly to the emissions inventory for many U.S. ports. This is illustrated in Table VIII–4 which presents the mobile source inventory contributions of these vessels for several ports. The ports in this table were selected to present a sampling over a wide geographic area along the U.S. coasts. In 2005, these twenty ports received approximately 60 percent of the vessel calls to the U.S. from ships of 10,000 DWT or greater.[116]

TABLE VIII–4.—CONTRIBUTION OF COMMERCIAL MARINE VESSELS[a] TO MOBILE SOURCE INVENTORIES FOR SELECTED PORTS IN 2002

Port area	NO_X percent	$PM_{2.5}$ percent	SO_X percent
Valdez, AK	4	10	43
Seattle, WA	10	20	56
Tacoma, WA	20	38	74
San Francisco, CA	1	1	31
Oakland, CA	8	14	80
LA/Long Beach, CA	5	10	71
Beaumont, TX	6	20	55
Galveston, TX	5	12	47
Houston, TX	3	10	41
New Orleans, LA	14	24	59
South Louisiana, LA	12	24	58
Miami, FL	13	25	66
Port Everglades, FL	9	20	56
Jacksonville, FL	5	11	52
Savannah, GA	24	39	80
Charleston, SC	22	33	87
Wilmington, NC	7	16	73
Baltimore, MD	12	27	69
New York/New Jersey	4	9	39
Boston, MA	4	5	30

[a] This category includes emissions from Category 3 (C3) propulsion engines and C2/3 auxiliary engines used on ocean-going vessels.

2. Inventory Calculation Methodology

The exhaust emission inventories presented above for commercial marine vessels, with Category 3 marine engines, include emissions from vessels in-port and from vessels engaged in interport transit. This section gives a general overview of the methodology used to estimate the emission contribution of these vessels. A more detailed description of this inventory analysis is available in the public docket.[117]

For the purposes of this analysis, in-port operation includes cruising, reduced speed zone, maneuvering, and hotelling. The in-port analysis includes operation out to a 25 nautical mile radius from the entrance to the port. Interport operation includes ship traffic, within the U.S. Exclusive Economic Zone (EEZ), not included as part of the port emissions analysis. In general, the EEZ extends to 200 nautical miles from the U.S. coast. Exceptions include geographic regions near Canada, Mexico and the Bahamas where the EEZ extends less than 200 nautical miles from the U.S. coast.

The port inventories are based on detailed emission estimates for eleven specific ports. The port inventories were estimated using activity data for that port (number of port calls, vessel types and typical times in different operating modes) and an emission factor for each mode. Emission estimates for all other commercial ports were developed by matching each of the other commercial ports to one of the eleven specific ports. Matching was based on characteristics of port activity, such as predominant vessel types, harbor craft and region of the country. The detailed port emissions were then scaled for the other commercial ports based on relative port activity.[118] An exception to this is that detailed port inventories for fourteen California ports were provided by the California Air Resources Board (ARB).

To calculate the mobile fractions in Table VIII–4, we compared commercial marine port inventory estimates described above to county-level mobile source emission estimates developed in support of the recent rulemaking for national PM ambient air quality standards.[119] Both propulsion engines and auxiliary engines are included in these estimates. The county-level inventories were adjusted to include the updated emissions estimates for commercial marine vessels.

Recently, the California Air Resources Board (ARB) sponsored the development of new national inventory estimates for Category 3 marine engines.[120] The new approach captures actual interport activity, by using information on ship movements, ship attributes, and the distances of routes. We believe that this methodology is an improvement over past evaluations of interport shipping emissions which were based on estimates of ton-miles of

[116] "Vessel Calls at U.S. & World Ports; 2005," U.S. Maritime Administration, Office of Statistical and Economic Analysis, April 2006, Docket ID EPA–HQ–OAR–2007–0121–0040.

[117] "Development of Inventories for Commercial Marine Vessels with Category 3 Engines," U.S. EPA, October 2007.

[118] Browning, L., Hartley, S., Lindhjem, C., Hoats, A., "Commercial Marine Port Inventory Development; Baseline Inventories," prepared by ICF International and Environ for the U.S. Environmental Protection Agency, September 2006, Docket ID EPA–HQ–OAR–2007–0121–0037.

[119] Regulatory Impact Analysis for the Review of the Particulate Matter National Ambient Air Quality Standards, EPA Docket: EPA–HQ–OAR–2006–0834–0048.3.

[120] Corbett, J., PhD, Wang, C., PhD, Firestone, J., PhD., "Estimation, Validation, and Forecasts of Regional Commercial Marine Vessel Inventories, Tasks 1 and 2: Baseline Inventory and Ports Comparison; Final Report," University of Delaware, May 3, 2006, Available electronically at *http://www.arb.ca.gov/research/seca/jctask12.pdf,* Docket ID EPA–HQ–OAR–2007–0121–0038.

cargo moved. The new methodology captures ship traffic more completely which results in much higher estimates of total emissions from commercial marine vessels engaged in interport traffic within the U.S. EEZ.

Our emission inventory estimates for interport traffic are based on the ARB-sponsored study with four primary modifications.[121] [122] First, we use only the interport traffic estimates from the study and rely on our own, more detailed, analysis of in-port emissions. Second, we modified the geographic boundaries of the inventory to align with the U.S. EEZ. Third, we use adjusted emission factors for PM emissions to better reflect the sum of available PM emissions data from engines on marine vessels.

The detailed inventory studies described above were performed for 2002. To calculate emission inventories for future years, we applied separate growth rates for the West Coast, Gulf Coast, East Coast, and Great Lakes. These emission inventory growth estimates were determined based on economic growth projections of trade between the United States and other regions of the world.[123] In contrast, the ARB-sponsored study looks at a range of growth rates based on extrapolations of historical growth in installed power.[124] The approach used by EPA is more conservative in that it uses lower growth rate projections.

The inventory estimates include emissions from both U.S. flagged vessels and foreign flagged vessels. The majority of the ship operation near the U.S. coast is from ships that are not registered in the United States. According to the U.S. Maritime Administration, in 2005, approximately 87 percent of the calls by ocean-going vessels (10,000 dead weight tons or greater) at U.S. ports were made by foreign vessels.[125]

This inventory analysis includes emissions from Category 3 propulsion engines and the Category 2 and 3 auxiliary engines used on these vessels. Based on our emissions inventory analysis, auxiliary engines contribute approximately half of the exhaust emissions from vessels in port. In contrast, auxiliary engines only represent about 4 percent of the exhaust emissions from ships engaged in interport traffic.

The exhaust emission inventory for commercial marine vessels with Category 3 marine engines includes operation that extends out to 200 nautical miles from shore. Considering all emissions from ships operating in the U.S. EEZ, emissions in ports contribute to less than 20 percent of the total inventory. However, we recognize that emissions closer to shore are more likely to impact human health and welfare because of their proximity to human populations. We have initiated efforts to perform air quality modeling to quantify these impacts. The air quality modeling will consider transport of emissions over the ocean, meteorological data, population densities, emissions from other sources, and other relevant information. We request comment on the methodology used to develop exhaust inventory estimates for ships with Category 3 engines operating near the U.S. coast.

As discussed above, the national inventories presented here are for the Exclusive Economic Zone around the 50 states. Note that the ship traffic in the EEZ includes not only direct movements to and from U.S. ports but also movements up and down the coast. The boundaries for the EEZ are presented in Figure VIII–1.

BILLING CODE 6560–50–P

[121] ''Recalculation of Baseline and 2005 Emissions and Fuel Consumption,'' memorandum from Lou Browning, ICF and Chris Lindhjem and Lyndsey Parker, Environ, to Penny Carey, Mike Samulski, and Russ Smith, U.S. EPA, July 19, 2007.

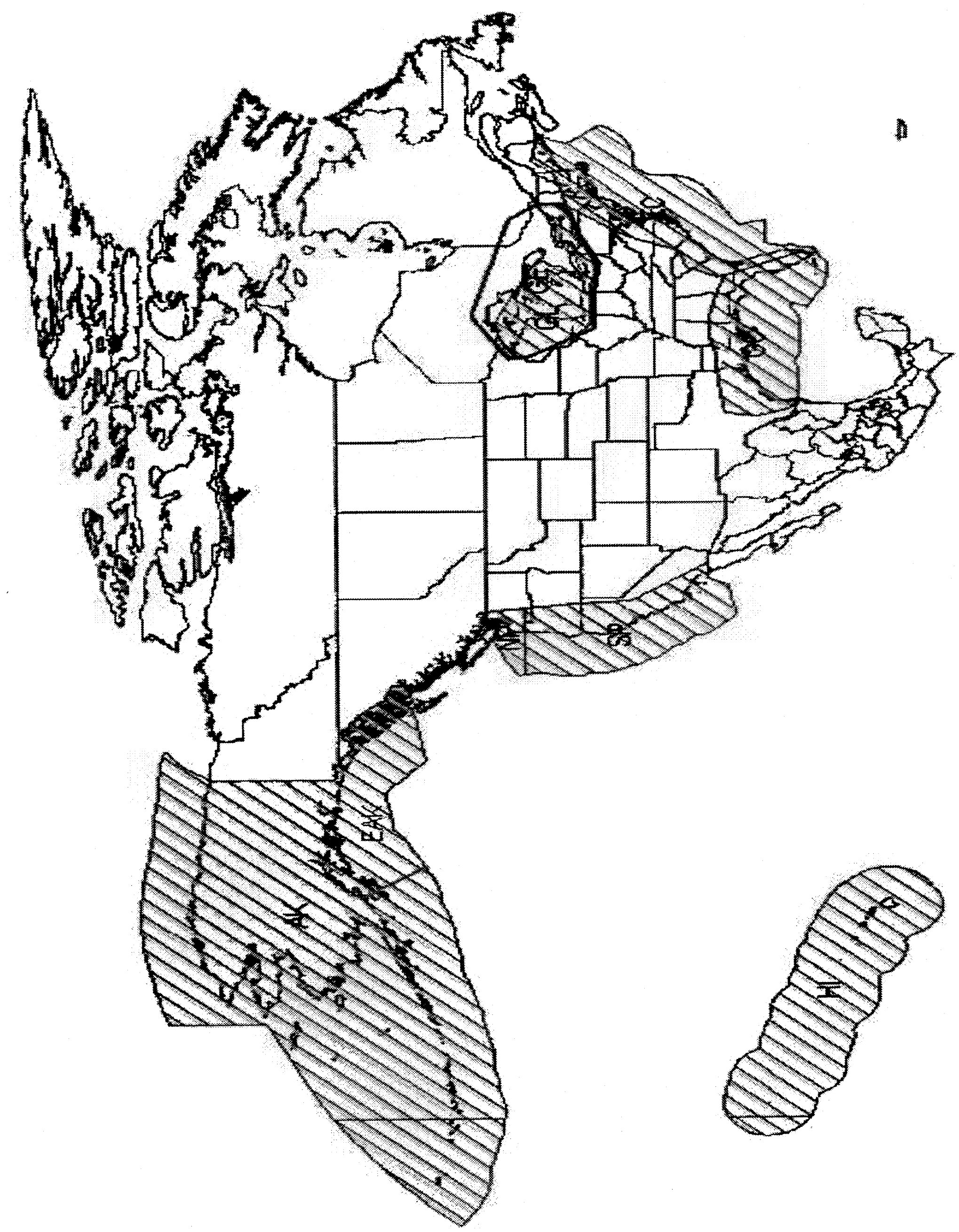
[122] ''U.S. and Regional Totals of Marine Vessel Emissions and Fuel Consumption under WA 0–2 Tasks 6 and 7,'' draft memorandum from Abby Hoats and Chris Lindhjem, Environ, to Lou Browning, ICF International, April 23, 2007.

[123] ''RTI Estimates of Growth in Bunker Fuel Consumption,'' memorandum from Michael Gallaher and Martin Ross, RTI International, to Barry Garelick and Russ Smith, U.S. EPA, April 24, 2006, Docket ID EPA–HQ–OAR–2007–0121–0039.

[124] Corbett, J., PhD, Wang, C., PhD, ''Estimation, Validation, and Forecasts of Regional Commercial Marine Vessel Inventories, Tasks 3 and 4: Forecast Inventories for 2010 and 2020; Final Report,'' University of Delaware, May 3, 2006, Docket ID EPA–HQ–OAR–2007–0121–0012.

[125] ''Vessel Calls at U.S. & World Ports; 2005,'' U.S. Maritime Administration, Office of Statistical and Economic Analysis, April 2006, Docket ID EPA–HQ–OAR–2007–0121–0040.

Figure VIII-1: Regions of U.S. EEZ used for Category 3 Inventory Analysis



BILLING CODE 6560–50–C

Table VIII–5 presents the 2002 national exhaust emission inventory for commercial marine vessels, with Category 3 marine engines, subdivided into the seven regions shown in the above figure. The Alaska and Hawaii regions contribute to roughly one-fifth of the national emissions inventory. The inventory for the Alaska EEZ includes emissions from ships on a great circle route, along the Aleutian Islands, between Asia and the U.S. West Coast. Therefore, eastern Alaska, which includes most of the state population, is presented separately in the table below. The Hawaii EEZ includes major shipping lanes across the Pacific that pass near the Hawaiian isles.

TABLE VIII–5.—2002 REGIONAL U.S. EMISSIONS FROM COMMERCIAL MARINE VESSELS [a]

[Tons/yr]

Region	NO_X [short tons]	$PM_{2.5}$ [short tons]	SO_X [short tons]
South Pacific	116,057	8,283	62,944
North Pacific	28,941	2,205	16,469
East Coast	243,261	17,901	153,597
Gulf Coast	192,130	14,374	110,382
Alaska (east)	20,078	1,458	11,037
Alaska (west)	66,768	4,799	35,998
Hawaii	60,501	4,372	32,970
Great Lakes (U.S. only)	16,708	1,207	9,098
Great Lakes (Canada only)	5,621	405	3,043
Total (using U.S. only Great Lakes)	744,444	54,599	432,496

[a] This category includes emissions from Category 3 (C3) propulsion engines and C2/3 auxiliary engines used on ocean-going vessels.

B. Potential Costs

The emission-control technologies we are considering for Category 3 marine engines are already in development or in commercial use in some marine applications. The draft Regulatory Impact Analysis [126] for the May 29, 2002 proposed rulemaking for Category 3 marine engines (67 FR 37548) included an analysis of regulatory alternatives which included advanced technologies. To estimate costs of this prospective emissions control program, we expect to start with cost estimates that were developed as part of that regulatory analysis. We will modify these costs as needed to take into account advances in technology, changes in cost structure, and comments received on this ANPRM. We encourage commenters to review the information covering all aspects of engine costs in the regulatory impact documents for the earlier Category 3 rulemaking and to provide comments on cost-related issues. In addition, we are interested in cost information associated with potential retrofitting concepts and in information about any unique costs associated with equipment redesign for the marine market.

We will also consider the economics of desulfurizing residual fuel, using of distillate fuel, and blending high and low sulfur fuels. Due to high refinery production costs, it is not likely that much new volume of residual fuel will be desulfurized. We expect to employ a worldwide refinery modeling analysis to estimate the cost for desulfurizing residual fuel and to estimate the cost for the production of additional distillate fuel in our analysis for different fuel volume scenarios. Additionally, we will estimate scrubbing costs and potential scrubber penetration rates for ships, as the use of scrubbers is another method that ships may use to comply, in lieu of using low sulfur fuel. The resulting fuel cost from our refinery analysis will be compared to the costs from scrubbing and fuel blending to determine the most economical method for complying with the standards for Category 3 marine engines. We request comment on the potential costs of low sulfur marine fuels.

[126] ''Draft Regulatory Support Document: Control of Emissions from Compression-Ignition Marine Diesel Engines at or Above 30 Liters per Cylinder,'' U.S. Environmental Protection Agency, April, 2002.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under section (3)(f)(1) Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of this Executive Order. This Advance Notice has been sent to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

We will prepare information collection requirements as part of our proposed rule and submit them for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires agencies to endeavor, consistent with the objectives of the rule and applicable statutes, to fit regulatory and information requirements to the scale of businesses, organizations, and governmental jurisdictions subject to their regulations. SBREFA amended the RFA to strengthen its analytical and procedural requirements and to ensure that small entities are adequately considered during rule development. The Agency accordingly requests comment on the potential impacts on a small entity of the program described in this notice. These comments will help the Agency meet its obligations under SBREFA and will suggest how EPA can minimize the impacts of this rule for small entities that may be adversely impacted.

Depending on the number of small entities identified prior to the proposal and the level of any contemplated regulatory action, we may convene a Small Business Advocacy Review Panel under section 609(b) of the Regulatory Flexibility Act as amended by SBREFA. The purpose of the Panel would be to collect the advice and recommendations of representatives of small entities that could be impacted by the eventual rule. If we determine that a panel is not warranted, we would intend to work on a less formal basis with those small entities identified.

Although we do not believe that this rule will have a significant economic impact on a substantial number of small entities, we are requesting information on small entities potentially impacted by this rulemaking. Information on company size, number of employees, annual revenues and product lines would be especially useful. Confidential business information may be submitted as described under **SUPPLEMENTARY INFORMATION.**

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As part of the development of our Notice of Proposed Rulemaking, we will examine the impacts of our proposal with respect to expected expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

As part of the development of our Notice of Proposed Rulemaking, we will examine the impacts of our proposal with respect to the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

As part of the development of our Notice of Proposed Rulemaking, we will examine the impacts of our proposal with respect to tribal implications.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it does not involve decisions on environmental health or safety risks that may disproportionately affect children. The EPA believes that the emissions reductions from the strategies proposed in this rulemaking will further improve air quality and will further improve children's health.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) requires that we determine whether or not there is a significant impact on the supply of energy caused by our rulemaking. These impacts include: Reductions in supply, reductions in production, increases in energy usage, increases in the cost of energy production and distribution, or other similarly adverse outcomes. We anticipate that our proposal will not be a ''significant energy action'' as defined by this order because we are not reducing the supply or production of any fuels or electricity, nor are we increasing the use or cost of energy by more than the stated thresholds. The proposed standards will have for their aim the reduction of emissions from certain marine engines using either exhaust gas cleaning technology or an alternative grade of marine fuel, and will have no effect on fuel formulation.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104 113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

As part of the development of our Notice of Proposed Rulemaking, we will examine the availability and use of voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Rather the opposite as more low-income individuals tend to live closer to marine ports, and it is these areas that will receive the most benefits in this rule that will reduce emissions of large marine engines.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 94

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Vessels, Warranties.

Dated: November 29, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–23556 Filed 12–6–07; 8:45 am]

BILLING CODE 6560–50–P

Friday,

December 7, 2007

Part V

Securities and Exchange Commission

17 CFR Part 240

Exemption of Compensatory Employee Stock Options From Registration Under Section 12(G) of the Securities Exchange Act of 1934; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–56887; International Series Release No. 1305; File No. S7–14–07]

RIN 3235–AJ91

Exemption of Compensatory Employee Stock Options From Registration Under Section 12(G) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting two exemptions from the registration requirements of the Securities Exchange Act of 1934 for compensatory employee stock options. The first exemption will be available to issuers that are not required to file periodic reports under the Exchange Act. The second exemption will be available to issuers that are required to file those reports because they have registered under Exchange Act Section 12 a class of security or are required to file reports pursuant to Exchange Act Section 15(d). The exemptions will apply only to the issuer's compensatory employee stock options and will not extend to the class of securities underlying those options.

DATES: *Effective Date:* December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Amy M. Starr, Senior Special Counsel to the Director, at (202) 551–3115, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are amending rule 12h–1 [1] under the Securities Exchange Act of 1934.[2]

Table of Contents

I. Introduction and Background

A. Proposing Release and Public Comment Letters

On July 5, 2007, we proposed amendments to Exchange Act Rule 12h–1 to provide two exemptions from Exchange Act Section 12(g) [3] registration for compensatory employee stock options.[4] The first proposed exemption applied to compensatory employee stock options of an issuer that did not have a class of security registered under Exchange Act Section 12 [5] and was not subject to the reporting requirements of Exchange Act Section 15(d),[6] provided certain conditions were met. The proposed exemption built on a line of no-action letters issued by the staff of the Division of Corporation Finance that granted relief from Exchange Act Section 12(g) registration to private, non-reporting issuers for their compensatory employee stock options.[7] The second proposed exemption applied to compensatory employee stock options of issuers that were required to file periodic reports under the Exchange Act because they had registered under Section 12 the class of equity security underlying those options.

In response to our request for comment on the Proposing Release, we received twelve comment letters from various persons, all of whom expressed support for the need for the proposed exemptions.[8] Commenters expressed differing concerns about the scope of the exemptions, and the transferability restrictions and information conditions of the proposed exemption for private, non-reporting issuers. After considering commenters' views, we are adopting amendments to Exchange Act Rule 12h-1, substantially as proposed, with some modifications including:

• Exemption for private, non-reporting issuers:

—Elimination of transferability and ownership restrictions on holders of shares issued on exercise of compensatory employee stock options; and

—Elimination of an issuer's obligation to provide certain required information to holders of shares received on exercise of compensatory employee stock options.

• Exemption for public reporting issuers:

—Expansion of the category of issuers eligible to rely on the exemption to include any issuer required to file periodic reports under Exchange Act Section 13 [9] or Section 15(d).

B. Employee Stock Options and Exchange Act Section 12(g)

In the 1980s, private, non-reporting issuers began using compensatory employee stock options [10] to compensate a broader range of employees, including executive, middle, and lower-level employees, directors, and consultants.[11] Compensatory

[1] 17 CFR 240.12h–1.

[2] 15 U.S.C. 78a *et seq.*

[3] 15 U.S.C. 78*l*(g).

[4] *Exemption of Compensatory Employee Stock Options from Registration Under Section 12(g) of the Securities Exchange Act of 1934,* Release No. 34–56010 (Jul. 10, 2007) [72 FR 37608] (''Proposing Release'').

[5] 15 U.S.C. 78*l*.

[6] 15 U.S.C. 78o(d).

[7] *See, e.g.,* no-action letters to Starbucks Corporation (available Apr. 2, 1992); Kinko's, Inc. (available Nov. 30, 1999); Mitchell International Holding, Inc. (available Dec. 27, 2000) (''Mitchell International''); AMIS Holdings, Inc. (available Jul. 30, 2001) (''AMIS Holdings''); Headstrong Corporation (available Feb. 28, 2003); and VG Holding Corporation (available Oct. 31, 2006) (''VG Holding'').

[8] *See* letters from American Bar Association, Committee on Federal Regulation of Securities (''ABA''); America's Community Bankers (''ACB''); Center for Audit Quality (''CAQ''); Deloitte & Touche LLP (''D &T''); Drinker Biddle & Reath LLP (''Drinker''); Ernst & Young LLP (''E &Y''); Freescale Semiconductor (''Freescale''); KPMG LLP (''KPMG''); Andrew Ross, Partner, Loeb & Loeb (''Ross''); New York State Society of Certified Public Accountants (''NYSSCPA''); Pink Sheets LLC (''Pink Sheets''); and Simpson Thacher & Bartlett LLP (''Simpson'').

[9] 15 U.S.C. 78m.

[10] Throughout this release, for purposes of the exemption for private, non-reporting issuers, we use the term ''compensatory employee stock options'' to refer to stock options issued to employees, directors, consultants, and advisors (to the extent permitted under Securities Act Rule 701 [17 CFR 230.701]). For reporting issuers, the phrase also refers to those persons described in General Instruction A.1(a) to Form S–8 [17 CFR 239.16b].

[11] The National Center for Employee Ownership surveyed 275 venture capital-backed private businesses in the technology and telecommunications businesses. Of these firms,

employee stock options provide a method to use non-cash compensation to attract, retain, and motivate company employees, directors, and consultants.[12] Since the 1990s, a number of private, non-reporting issuers have granted compensatory employee stock options to 500 or more employees, directors, and consultants.[13]

Under Exchange Act Section 12(g), an issuer with 500 or more holders of record of a class of equity security and assets in excess of $10 million at the end of its most recently ended fiscal year must register that class of equity security, unless there is an available exemption from registration.[14] Stock options, including stock options issued to employees under stock option plans, are a separate class of equity security for purposes of the Exchange Act.[15] Accordingly, an issuer with 500 or more optionholders and more than $10 million in assets is required to register that class of options under the Exchange Act, absent an available exemption. While there is an exemption from Exchange Act Section 12(g) registration for interests and participations in certain other types of employee compensation plans involving securities,[16] currently there is no exemption for compensatory employee stock options.

The addition of Section 12(g) to the Exchange Act in 1964 was intended ''to extend to investors in certain over-the-counter securities the same protection now afforded to those in listed securities by providing that the issuers of certain securities now traded over the counter shall be subject to the same requirements that now apply to issuers of securities listed on an exchange.'' [17] Further, Exchange Act Section 12(g) extended the disclosure and other Exchange Act safeguards to unlisted securities as a means to prevent fraud.[18]

A number of private, non-reporting issuers faced with registration under Exchange Act Section 12(g) due solely to their compensatory employee stock options being held by 500 or more holders of record (as well as having more than $10 million in assets) at the end of their fiscal year have requested registration relief from our Division of Corporation Finance.[19] Since 1992, the Division has provided relief through no-action letters [20] to these private issuers when specified conditions were present. More recently, the Advisory Committee on Smaller Public Companies, in its Final Report, recommended that we provide Exchange Act Section 12(g) registration relief for compensatory employee stock options.[21]

As we discussed further in the Proposing Release, we believe that it is appropriate at this time to adopt two new exemptions from the registration provisions of Exchange Act Section 12(g) for compensatory employee stock options issued under employee stock option plans that are limited to employees, directors, consultants, and advisors of the issuer, its parents, and majority-owned subsidiaries of the issuer or its parents.[22]

II. Discussion of Exemptions

We are adopting two amendments to Exchange Act Rule 12h–1 as proposed, with some modifications. These amendments will:

- Provide an exemption for private, non-reporting issuers from Exchange Act Section 12(g) registration for compensatory employee stock options issued under employee stock option plans; and
- Provide an exemption from Exchange Act Section 12(g) registration for compensatory employee stock

77% provided options to all employees while 23% provided them only to select employees. ''New Data Show Venture-Backed Companies Still Issue Options Broadly,'' *http://www.nceo.org/library/option_venturebacked.html*; *see also* J. Hand, 2005 ''Give Everyone a Prize? Employee Stock Options in Private Venture-Backed Firms,'' Working Paper, Kenan-Flagler Business School, UNC Chapel Hill, available at http://ssrn.com/abstracts=599904 (''Hand Paper'') (study investigating the impacts on the equity values of private venture-backed firms of the organizational depth to which they grant employee stock options).

Securities Act Rule 701, which provides an exemption from Securities Act registration for non-reporting issuers for offerings of securities to employees, directors, consultants and advisors, and specified others, pursuant to written compensatory benefit plans or agreements, has given private issuers great flexibility in granting compensatory employee stock options to employees (and other eligible persons) at all levels. *See* Rule 701(c) [17 CFR 230.701(c)]; and *Rule 701 Exempt Offerings Pursuant to Compensatory Arrangements,* Release No. 33–7645 (Mar. 8, 1999) [64 FR 11095] (''Rule 701 Release''). *See also Compensatory Benefit Plans and Contracts,* Release No. 33–6768 (Apr. 14, 1988) [53 FR 12918].

[12] *See* Hand Paper, note 11 *supra.*

[13] *See* no-action letters cited at note 7 *supra.*

[14] The asset threshold was set originally at $1 million in Section 12(g). Pursuant to its authority under Section 12(h) of the Exchange Act, the Commission has increased the amount three times; from $1 million to $3 million in 1982 (*System of Classification for Purposes of Exempting Smaller Issuers From Certain Reporting and Other Requirements,* Release No. 34–18647 (Apr. 13, 1982)[47 FR 17046]), from $3 million to $5 million in 1986 (*Reporting by Small Issuers,* Release No. 34–23406 (Jul. 8, 1986) [51 FR 253601]), and from $5 million to $10 million in 1996 (*Relief from Reporting by Small Issuers,* Release No. 34–37157 (May 1, 1996) [61 FR 21353]).

[15] Exchange Act Section 3(a)(11) [15 U.S.C. 78c(a)(11)] defines equity security to include any right to purchase a security (such as options) and Exchange Act Rule 3a11–1 [17 CFR 240.3a11–1] explicitly includes options in the definition of equity security for purposes of Exchange Act Sections 12(g) and 16 [15 U.S.C. 78*l*(g) and 78p]. Exchange Act Section 12(g)(5) [15 U.S.C. 78*l*(g)(5)] defines class to include ''all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges.''

[16] The exemption from registration under Exchange Act Section 12(g) which is contained in Exchange Act Rule 12h–1(a), was adopted in 1965, for ''[a]ny interest or participation in an employee stock bonus, stock purchase, profit sharing, pension, retirement, incentive, thrift, savings or similar plan which is not transferable by the holder except in the event of death or mental incompetency, or any security issued solely to fund such plans.'' Rule 12h–1 is intended to exempt from Section 12(g) registration the same types of employee benefit plan interests as Section 3(a)(2) [15 U.S.C. 77c(a)(2)] of the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] exempts from Securities Act registration and, thus, does not cover stock options. *See, e.g.,* L. Loss and J. Seligman, *Securities Regulations, 3d.,* at § 6–A–4.

[17] House of Representatives Report No. 1418 (1964), 88th Cong., 2d Sess., HR 679, p.1. *See also* Section 3(c) of the Securities Act Amendments of 1964, Pub. L. 88–467; 78 Stat. 565.

[18] Senate Committee Report, No. 379 (1963), 88th Cong., 1st Sess., p. 63.

[19] The Division has delegated authority to grant (but not deny) applications for exemption under Exchange Act Section 12(h). *See* Rule 200.30–1(e)(7) [17 CFR 200.30–1(e)(7)].

[20] For the conditions necessary to receive relief under these letters and orders *see, e.g.,* the no-action letter to Mitchell International, note 7 *supra* (for the pre-2001 relief) and the no-action letters to AMIS Holdings, note 7 *supra;* ISE Labs, Inc. (available Jun. 2, 2003); Jazz Semiconductor, Inc. (available Nov. 21, 2005) (''Jazz Semiconductor''); and VG Holding, note 7 *supra* (for the expanded relief beginning in 2001).

[21] *Final Report of the Advisory Committee on Smaller Public Companies to the Securities and Exchange Commission,* Apr. 23, 2006 at 87 (''Final Report of the Advisory Committee'').

[22] The exemption for private, non-reporting issuers allows compensatory employee stock options to be held only by those persons described in Securities Act Rule 701(c) [17 CFR 230.701(c)] (including permitted transferees), while the exemption for reporting issuers also allows options to be held by those persons described in General Instruction A.1(a) to Form S–8. Securities Act Rule 701(c) lists the categories of persons to whom offers and sales of securities under written compensatory benefit plans or contracts may be made in reliance on Securities Act Rule 701 by an issuer, its parents, and majority-owned subsidiaries of the issuer or its parents. The categories of persons are: employees (including specified insurance agents); directors; general partners; trustees (where the issuer is a business trust); officers; consultants and advisors (under certain conditions); family members who acquire their securities from such persons through gifts or domestic relations orders; and former employees, directors, general partners, trustees, officers, consultants and advisors only if such persons were employed by or providing services to the issuer at the time the securities were offered. The exemption also allows options to be transferred to (and held by) family members (as described in Securities Act Rule 701) through gifts or domestic relations orders, or to an executor or guardian of the optionholder upon the death or disability of the optionholder. For ease of discussion, in this release we use the phrase ''employees, directors, consultants and advisors of the issuer'' to refer to those persons described in Securities Act Rule 701(c) and transferees permitted by the exemption. For reporting issuers, the exemption will cover grants of options made prior to and after the issuer becomes subject to the Exchange Act reporting requirements.

options of issuers that have registered under Exchange Act Section 12 a class of security or are required to file reports pursuant to Exchange Act Section 15(d).

Given the differences between issuers that are required to file periodic reports under the Exchange Act and those issuers that do not have such an obligation, including the nature of the trading markets and the amount of publicly available information, we believe that it is appropriate to adopt separate exemptions for these different types of issuers.

A. Exemption for Compensatory Employee Stock Options of Issuers That Are Not Exchange Act Reporting Issuers

We believe it is appropriate to provide an exemption from Exchange Act registration, based on the factors identified in Exchange Act Section 12(h),[23] for compensatory employee stock options of issuers that are not required to file reports under the Exchange Act.[24] We believe that an exemption from Exchange Act registration of compensatory employee stock options for private, non-reporting issuers will provide useful certainty to those issuers in their compensation decisions and will help them avoid becoming subject to the registration and reporting requirements of the Exchange Act prior to the time they have public shareholders. The availability of this exemption is subject to specified limitations, including limitations concerning permitted optionholders, transferability, and provision of information. We believe that the conditions to the exemption and the existing statutory provisions and rules provide holders of compensatory employee stock options in private, non-reporting issuers appropriate disclosure and investor protections under the federal securities laws, given the compensatory circumstances of the securities issuance and the restrictions on transferability of the compensatory employee stock options. As such, we believe that the exemption is in the public interest, in that it would clarify and routinize the basis for an exemption from Exchange Act Section 12(g) registration for compensatory employee stock options so private, non-reporting issuers would be able to continue to use compensatory employee stock options and would provide appropriate investor protections for optionholders.

1. Eligible Issuers

The amendment we are adopting today will provide an exemption from Exchange Act Section 12(g) registration for compensatory employee stock options of the following types of issuers:

- Issuers that do not have a class of securities registered under Exchange Act Section 12; and
- Issuers that are not subject to the reporting requirements of Exchange Act Section 15(d).[25]

The exemption will be available only to those issuers that are not required to report under the Exchange Act. As such, the exemption will terminate once the issuer becomes subject to the reporting requirements of the Exchange Act. The exemption also will terminate if the issuer no longer satisfies the conditions to the exemption.[26]

2. Eligible Compensatory Employee Stock Options

The exemption for compensatory employee stock options will:

- Apply only to compensatory employee stock options that are issued under a written compensatory stock option plan[27] that is limited to employees, directors, consultants, and advisors of the issuer, its parents, or majority-owned subsidiaries of the issuer or its parents;[28]
- Apply to all compensatory employee stock options issued under all written compensatory stock option plans on a combined basis where the securities underlying the compensatory employee stock options are of the same class of securities of the issuer, with the exemptive conditions applying to the compensatory employee stock options issued under each option plan; and
- Not extend to any class of securities received or to be received on exercise of the compensatory employee stock options.

The exemption covers all compensatory employee stock options meeting the conditions of the exemption, even if the compensatory employee stock options are issued under separate written option plans of the issuer, its parents, or majority-owned subsidiaries of the issuer or its parents.[29] For the purpose of the exemption, the compensatory employee stock options will be considered to belong to the same class of equity security of the issuer if the same class of securities of the issuer will be issuable on exercise of the compensatory employee stock options.[30] While one commenter

[23] Exchange Act Section 12(h) provides for exemptive authority with regard to certain provisions of the Exchange Act. Included in Exchange Act Section 12(h) is the authority to create appropriate exemptions from the Exchange Act registration requirements. Under Exchange Act Section 12(h), the Commission may exempt a class of securities by rules and regulations or by order if it ''finds, by reason of the number of public investors, amount of trading interest in the securities, the number and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors.'' Exchange Act Section 12(h) [15 U.S.C. 78*l*(h)].

[24] We believe that the exemption is consistent with the exemption provided for other employee benefit plans in Exchange Act Rule 12h–1, which is not available for stock option plans, the compensatory employee stock options issued pursuant to such plans, or the securities issued on exercise of such compensatory employee stock options. We believe that the characteristics of many employee benefit plans, which are by their own terms limited to employees, not available to the general public, and subject to transfer restrictions, obviate the need for applicability of all the rules and regulations aimed at public trading markets. In addition, because many of the conditions in the exemption refer to certain Securities Act Rule 701 definitions and requirements, we believe that the exemption from Exchange Act Section 12(g) registration will allow non-reporting issuers to continue to rely on Securities Act Rule 701 in offering and selling compensatory employee stock options and the shares issued on exercise of those options.

[25] Under Exchange Act Section 15(d), an issuer's ''duty to file [reports under Section 15(d) is] automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 12 of this title.'' [15 U.S.C. 78o(d)].

[26] The exemption under Exchange Act Section 12 will allow issuers 120 calendar days to register the class of options once an issuer no longer is able to rely on the exemption. Currently, the no-action letter relief terminates once an issuer becomes subject to the Exchange Act reporting requirements. *See, e.g.*, no-action letter to VG Holding, note 7 *supra*. Moreover, the exemption will not be available if the issuer was required, but failed, to register another class of equity security under the Exchange Act.

[27] Securities Act Rule 701 is available only for offers and sales of compensatory employee stock options and the shares issuable upon exercise of those options that are issued under written compensatory employee benefit plans of an issuer, its parents, or majority-owned subsidiaries of the issuer or its parents. *See* Securities Act Rule 701(c) [17 CFR 230.701(c)]. Thus, the requirement that the options be issued under written compensatory stock option plans will not impose a new obligation on issuers relying on Securities Act Rule 701 in offering and selling compensatory employee stock options or the shares issued on exercise of those options.

[28] The exemption for the compensatory employee stock options will not extend to other rights issued in connection with the compensatory employee stock options, such as stock appreciation rights. Any such other rights will be evaluated separately for purposes of Exchange Act Section 12(g) registration. Some commenters had requested that the exemption apply to all compensation arrangements involving securities, including restricted stock units, stock appreciation rights, and other rights or securities. *See* letters from ABA and Freescale. Consistent with the scope of the staff no-action letters granting Section 12(g) registration relief for compensatory employee stock options, at this time we believe the exemption should address only compensatory employee stock options. We, therefore, are not expanding the scope of the exemption beyond compensatory employee stock options.

[29] In response to comment (*see* letter from ABA), we have clarified that the options may be granted under plans of the issuer, its parents, and majority-owned subsidiaries of the issuer or its parents.

[30] *See* Exchange Act Section 12(g)(5) [15 U.S.C. 78*l*(g)(5)].

requested that we allow companies to determine whether a particular group of compensatory employee stock options was the same class as other compensatory employee stock options for purposes of determining whether it had met the 500 holder threshold,[31] we are adopting the exemption as proposed in this regard.[32] We believe that, solely for purposes of determining whether the Rule 12h–1 exemption is available, it is important to establish uniformity in evaluating whether there are 500 or more holders of compensatory employee stock options and so that issuers appropriately analyze when Exchange Act Section 12(g) applies to their compensatory employee stock options.[33]

The exemption, as adopted, applies to the compensatory employee stock options only and not to the securities issued (or to be issued) on exercise of the compensatory employee stock options. Thus, the issuer will have to apply the registration requirements of Exchange Act Section 12 to the class of equity security underlying the compensatory employee stock options without regard to the exemption.[34]

3. Eligible Option Plan Participants

The exemption is available only where the class of persons eligible to receive compensatory employee stock options under the stock option plans is limited to those persons described in the exemption. These eligible optionholders are the same as those participants permitted under Securities Act Rule 701 and include: [35]

• Employees of the issuer, its parents, or majority-owned, direct or indirect, subsidiaries of the issuer or its parents;

• Directors of the issuer, its parents, or majority-owned, direct or indirect, subsidiaries of the issuer or its parents; and

• Consultants and advisors of the issuer, its parents, or majority-owned, direct or indirect, subsidiaries of the issuer or its parents.

As adopted, the exemption is limited to those situations where compensatory employee stock options may be held only by those persons who are permitted to hold or be granted compensatory employee stock options under Securities Act Rule 701 and their permitted transferees.[36] We believe that the experience of issuers and their counsels with Securities Act Rule 701 will ease compliance with and limit uncertainty regarding the exemption.[37]

Just as Securities Act Rule 701 was designed specifically not to be available for capital-raising transactions, the exemption will apply only to employee stock options issued for compensatory purposes. The restrictions on the eligible participants in the stock option plans are intended to assure that the exemption is limited to employee stock options issued solely for compensatory purposes.[38]

4. Option Terms

a. Compensatory Employee Stock Option Transferability Restrictions

The exemption is available only where there are certain restrictions on the transferability by an optionholder of those options and, prior to the exercise of the options, the shares issuable on exercise of those options.[39] Specifically, the exemption is available only if:

• The compensatory employee stock options and, prior to exercise, the shares to be received on exercise of those options cannot be transferred except, as permitted by the exemption: [40]

—To family members (as defined in Securities Act Rule 701) by gift or pursuant to domestic relations orders; and

—On death or disability of the optionholder; [41]

• There can be no other permitted pledges, gifts, hypothecations, or other transfers of the compensatory employee stock options, or shares issuable on exercise of those options, prior to exercise, until the issuer becomes subject to the reporting requirements of the Exchange Act or is no longer relying on the exemption; provided that there may be:

—Transfers back to the issuer; or

—Transfers in connection with a change of control or other acquisition transactions involving the issuer if, following such transaction, the options no longer will be outstanding and the issuer no longer will be relying on the exemption; [42] and

• The compensatory employee stock options or the securities issuable upon exercise of those options cannot be the subject of a short position, a ‘‘put equivalent position’’ [43] or a ‘‘call equivalent position’’ [44] by the optionholder, prior to exercise, until the issuer becomes subject to the reporting requirements of the Exchange Act or is no longer relying on the exemption; provided that the options may be subject to repurchase rights of the issuer or the optionholder may participate in a change of control or other acquisition transaction involving the issuer.

As adopted, the conditions provide that, except with regard to the limited

[31] *See* letter from ABA.

[32] One commenter suggested that the class of options should only include those options issued after the effective date of the exemption that satisfied the conditions of the exemption. *See* letter from Drinker. We are not adopting such a provision. Under the Exchange Act, the class of equity security is not determined based on when the securities are issued. The exemption provides that the class of compensatory employee stock options for purposes of the exemption includes all compensatory employee stock options on the same class of the issuer's securities regardless of whether the plan is a plan of the issuer, its parents, or majority-owned subsidiaries of the issuer or its parents. No distinction is made in the exemption as to when those options are issued.

[33] This provision will not affect the separate class analysis under Exchange Act Section 12(g)(5) for other purposes.

[34] For example, if an issuer had more than $10 million in assets and 500 or more holders of a class of equity security underlying the compensatory employee stock options as of the end of its fiscal year, it would have to register under Exchange Act Section 12 that class of equity security.

[35] *See* the discussion at note 22 *supra*.

[36] In this regard, we note that this category of eligible optionholders is broader than the category of persons to whom employee benefit securities, including compensatory employee stock options, may be offered and sold by reporting issuers using a Form S–8 registration statement. *See* General Instruction A.1(a) to Form S–8. As we note below, the exemption for reporting issuers will allow eligible optionholders to satisfy the definitions contained in either Securities Act Rule 701 or Form S–8 because an issuer may grant options both prior to and after it becomes subject to the periodic reporting requirements of the Exchange Act.

[37] Some commenters were concerned that the terms of outstanding options may not contain all the restrictive provisions of the exemption. (*See* letters from Drinker and Ross). We believe that our elimination of the restrictions on holders of shares received on exercise of an option and the modification of the transferability conditions affecting optionholders should address these concerns.

[38] All option grants and exercises must, of course, comply with the requirements of the Securities Act.

[39] The exemption does not impose any limitations on the ability of current or former employees, directors, consultants, or advisors of an issuer to retain or exercise their compensatory employee stock options.

[40] The transferability restrictions are not intended to supersede other transferability restrictions imposed for other reasons, including under the Internal Revenue Code of 1986, as amended [26 U.S.C. 422(b)(5)].

[41] These permitted transferees are intended to be the same as those permitted under Securities Act Rule 701(c) as well as executors or guardians of an optionholder on the death or disability of the optionholder. *See* note 22 *supra*.

[42] After an issuer becomes subject to the reporting requirements of the Exchange Act, the issuer will be able to rely on the exemption for Exchange Act reporting issuers only if it becomes subject to Exchange Act reporting as a result of its Exchange Act Section 12 registration of a class of security or pursuant to Exchange Act Section 15(d).

[43] 17 CFR 240.16a–1(h). Rule 16a–1(h) defines a ‘‘put equivalent position’’ as a derivative security position that increases in value as the value of the underlying equity decreases, including, but not limited to, a long put option and a short call option position.

[44] 17 CFR 240.16a–1(b). Rule 16a–1(b) defines a ‘‘call equivalent position’’ as a derivative security position that increases in value as the value of the underlying equity increases, including, but not limited to, a long convertible security, a long call option, and a short put option position.

permitted transfers specified in the conditions, an optionholder cannot be permitted, prior to exercise, to pledge, hypothecate, or otherwise transfer the compensatory employee stock options or the shares underlying those options, including through a short position, a ''put equivalent position,'' or a ''call equivalent position,'' until the issuer becomes subject to the reporting requirements of the Exchange Act or is no longer relying on the exemption.[45] For the exemption to be available, these transfer restrictions will have to apply to options outstanding at the time that the issuer is relying on the exemption.

The restrictions on transfer of the compensatory employee stock options and the shares underlying those options, prior to exercise, are intended to limit the possibility for a trading market to develop for the compensatory employee stock options while the issuer is relying on the exemption. These restrictions also are intended to assure that an optionholder is not able to profit from the compensatory employee stock options or the securities to be received on exercise of those options (except from permitted payments or transfers as described in the exemption), until the issuer becomes subject to the reporting requirements of the Exchange Act or is no longer relying on the exemption.

In response to comments, we have modified the transferability condition to permit optionholders to receive compensation for their options from the issuer or arising from a change of control or other acquisition transaction after which the options no longer will be outstanding and the issuer no longer will be relying on the exemption.[46]

Commenters also were concerned that a requirement for an issuer to repurchase the shares or options due to state law limitations on transfer restrictions could have adverse accounting consequences to companies.[47] As a result, we have modified the transferability conditions to eliminate a requirement for an issuer to repurchase options if an express prohibition on transfer of options is not permitted under applicable state law. Instead, the condition permits the issuer to provide that it may repurchase the options in the event of an impermissible transfer. Issuers also may provide that the options terminate in such an event. We note that compensatory employee stock option plans or written stock option agreements generally restrict the persons who may exercise the options, so providing for a termination of an option in the event of an impermissible transfer would, in many cases, already be contemplated by the terms of the written stock option agreement or plan.

We proposed that the transferability restrictions apply to holders of shares issued on exercise of the options. In response to comments,[48] we have not adopted this condition of the exemption. We understand from commenters that private, non-reporting issuers normally already have shareholder agreements and other mechanisms to restrict the transfer of shares received on exercise of options prior to the time the issuer becomes subject to the reporting requirements of the Exchange Act or is involved in a change of control or other acquisition transaction involving the issuer.[49] We also understand that private, non-reporting issuers do not anticipate that optionholders will exercise their options prior to a liquidity event, such as an initial public offering or sale of the company, or prior to termination of the options.[50]

We are not adopting as a condition to the exemption separate transferability restrictions on holders of the shares received on exercise of the compensatory employee stock options. While we acknowledged in the Proposing Release the existence of company-imposed and securities law transferability restrictions, we are persuaded to modify the exemption in light of the additional concerns that commenters believed the proposed transferability restrictions would raise. In modifying the exemption, we have considered the treatment of compensatory employee stock options under Securities Act Rule 701 as restricted securities as defined in Securities Act Rule 144,[51] the fact that optionholders typically do not exercise their options prior to their termination or a liquidity event and the fact that, if exercised, most private companies take steps to restrict transferability of shares received on exercise of compensatory employee stock options, so that there is a limited possibility of a market developing in the securities issued on exercise of immediately exercisable compensatory employee stock options. In addition, we have considered a commenter's view that imposing separate transferability restrictions on the holders of shares received on exercise of compensatory employee stock options may affect a company's decision to use stock options for compensatory purposes.[52] We also note that the exemptions we are adopting today do not impact the continued potential applicability of Exchange Act Section 12(g) to the securities issued on exercise of the options.

We also are not adopting the proposed restriction on other shares of the same class of equity security as those underlying the options. We believe that this restriction is no longer necessary because we have not adopted transferability restrictions on holders of securities received on exercise of compensatory employee stock options. In addition, we have taken into account one commenter's concern that the transferability restrictions on the optionholder with respect to shares of the same class as those issuable on exercise of the options would affect an optionholder's ability to dispose of other securities of the issuer that the optionholder owned.[53]

As proposed, the exemption would have provided that there could be no market, process, or methodology that would permit optionholders, prior to exercise, to receive compensation or consideration for their options, the shares issuable on exercise of the options, or shares of the same class of equity security as those underlying those options. Commenters noted that generally there is no market for the securities underlying the options while

[45] The current no-action letters contain similar conditions on transferability of the options, although the rule as adopted clarifies the limitations on the ability of optionholders to engage in certain derivative transactions prior to exercise, such as restrictions on an optionholder from entering into a ''put equivalent position'' or ''call equivalent position'' until the issuer becomes subject to the reporting requirements of the Exchange Act, or is no longer relying on the exemption. *See*, *e.g.*, no-action letter to VG Holding, note 7 *supra*. In addition, the amendment as adopted does not restrict holders of shares following exercise of compensatory employee stock options.

[46] *See* letters from ABA, Ross, and Simpson.

[47] *See* letters from CAQ, D&T, E&Y, and KPMG.

[48] *See* letters from ABA, Drinker, Ross, and Simpson.

[49] *See* letters from ABA, Freescale, Ross, and Simpson.

[50] In expressing their views that the proposed transferability restrictions should not be expected to affect a private company's ability to value the compensatory employee stock options under Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123R (revised 2004) *Share-Based Payment* (FAS 123R), some commenters noted that in valuing employee stock options for purposes of FAS 123R, private, non-reporting issuers use an expected term assumption that does not anticipate early exercise of the options. *See* letters from CAQ, E&Y, and KPMG. These commenters noted that employees of non-public companies normally do not have an incentive to exercise a vested option early due to the lack of a market for the underlying shares. These commenters observed that non-public company employees typically hold their options until they have incentive to exercise such as at the end of their terms, termination of employment, or until a liquidity event, such as an initial public offering or sale of the company occurs.

[51] 17 CFR 230.144. *See*, *e.g.*, Securities Act Rule 701(g).

[52] *See* letter from ABA. *See also*, letter from Ross.

[53] *See* letter from Ross.

the issuer is a private, non-reporting entity.[54] Commenters were concerned that optionholders should not be disadvantaged from receiving payments from an issuer or in connection with a change of control or other corporate transaction involving an issuer, either with respect to their options or shares of the issuer they already own.[55] In light of these comments, we do not believe the exemption should impair an optionholder's ability to participate in transactions involving the issuer's securities they already own and we do not believe the exemption should restrict an issuer or other shareholders from engaging in particular transactions due to the issuer's reliance on the exemption.

b. Permitted Exercisability of Compensatory Employee Stock Options

The exemption will not require that there be any restriction on the timing of the exercise of the compensatory employee stock options:

• By the optionholder (regardless of whether the optionholder continues to be an employee, director, consultant or advisor of the issuer);

• In the event of the death or disability of the optionholder, by the estate or guardian of the optionholder; or

• By a family member (as defined in Securities Act Rule 701) who acquired the options through a gift or domestic relations order.

5. Required Information

We are adopting the proposed requirement that the issuer provide information to optionholders with certain modifications. In response to comment, we are not adopting a requirement for issuers to provide information to holders of shares received on exercise of compensatory employee stock options after exercise or for issuers to provide optionholders access to their books and records.[56]

As adopted, the information condition will require the issuer, for purposes of the exemption, to periodically provide the following information to optionholders:[57]

• The same risk and financial information that would be required to be provided under Securities Act Rule 701 if securities sold in reliance on Securities Act Rule 701 in a 12-month period exceeded $5 million (as such provision may be modified[58]), with the optionholders being provided every six months required information, including financial statements that are not more than 180 days old.[59]

The issuer will be permitted to provide the required information to the optionholders either by:

• Physical or electronic[60] delivery of the information; or

• Notice to the optionholders of:

—The availability of the information on an Internet site that may be password-protected;[61] and

—Any password needed to access the information.

In Securities Act Rule 701, we established the type of information that employees holding compensatory employee stock options must be provided before the exercise of those options.[62] The Securities Act Rule 701 information provisions provide optionholders and other persons who purchase securities without registration under Securities Act Rule 701 with important information. While one commenter objected to the provision of information condition,[63] we believe that the ongoing provision of the same information is necessary and appropriate for purposes of the exemption from Exchange Act registration.[64] While requiring private, non-reporting issuers to provide information, as adopted, the exemption will allow flexibility in the means of providing the information by permitting physical, electronic, or Internet-based delivery.

Securities Act Rule 701 provides that the required information must be provided to an optionholder a reasonable period of time before the date of exercise of the compensatory employee stock options. Securities Act Rule 701 also requires that the required financial statements be as of a date no more than 180 days before the sale of the securities (which in the case of compensatory employee stock options is the date of exercise of the options). We believe that the exemption from Exchange Act registration presents the need for ongoing information to be provided to optionholders. As such, the exemption requires that, once an issuer has 500 or more optionholders, the optionholders must be provided every six months the required information, including financial statements that are not more than 180 days old.

We believe that our experience with Securities Act Rule 701 and the combined conditions of the exemption, including the eligibility and transferability provisions, make it appropriate to require the same risk and financial information as required under Securities Act Rule 701, as noted above, rather than essentially the same

[54] *See* letters from ABA, Freescale, Ross, and Simpson.

[55] *See* letters from ABA, Freescale, Ross, and Simpson.

[56] *See* letter from ABA.

[57] In response to comment (*see* letters from ABA and Ross), we are clarifying that the information conditions may commence once a company has 500 or more optionholders and may terminate once the company becomes subject to the reporting requirements of the Exchange Act or is no longer relying on the exemption.

[58] One commenter suggested that the exemption take into account changes in the dollar threshold in Securities Act Rule 701. *See* letter from ABA. The rule text, as proposed and adopted, refers only to the relevant paragraph of Securities Act Rule 701 and does not include a separate dollar threshold. Therefore, any change in the dollar threshold in Securities Act Rule 701 would apply to the exemption.

[59] *See* Securities Act Rule 701(e) [17 CFR 230.701(e)] for a description of the risk factor and financial statement requirements. The required information will have to be provided under the terms of the exemption, once an issuer is relying on the exemption regardless of whether the issuer would be required to provide the information under Securities Act Rule 701 (for example, because the issuer did not sell $5 million in securities in a 12-month period in reliance on Securities Act Rule 701). The financial statement requirements under Securities Act Rule 701 refers to financial statements of Part F/S of Form 1–A [17 CFR 239.90]. Part F/S of Form 1–A does not require audited financial statements unless an issuer has prepared them for other purposes. Otherwise, Part F/S of Form 1–A permits an issuer to provide two years of unaudited financial statements.

[60] Electronic delivery of such information will have to be made in compliance with the Commission's interpretations regarding the electronic delivery of information. *See, e.g.*, ''Use of Electronic Media,'' Release No. 34–42728 (Apr. 28, 2000) [65 FR 25843].

[61] A password-protected closed-system intranet site accessible to employees also would be a permitted method to provide the required information to those persons having access to such site.

[62] *See* Rule 701 Release, note 11 *supra*. ''The type and amount of disclosure needed in a compensatory securities transaction differs from that needed in a capital-raising transaction. In a bona fide compensatory arrangement, the issuer is concerned primarily with compensating the employee-investor rather than maximizing its proceeds from the sale. Because the compensated individual has some business relationship, perhaps extending over a long period of time, with the securities issuer, that person will have acquired some, and in many cases, a substantial amount of knowledge about the enterprise. The amount and type of disclosure required for this person is not the same as for the typical investor with no particular connection with the issuer.'' *Id.*

[63] See letter from ABA.

[64] As the Commission reminded issuers when it adopted the amendments to Securities Act Rule 701 in 1999, issuers should be aware that compliance with the minimum disclosure standards for Securities Act Rule 701 may not necessarily satisfy the antifraud standards of the securities laws. *See* Rule 701 Release, note 11 *supra*. (Preliminary Note 1 to Rule 701 states that issuers and other persons acting on their behalf have an obligation to provide investors with disclosure adequate to satisfy the antifraud provisions of the federal securities laws.) We recognize that the Advisory Committee has recommended modifications to Securities Act Rule 701 that would affect the thresholds that would trigger the disclosure provisions of that rule. Our amendments do not address the Advisory Committee's recommendations regarding Securities Act Rule 701. *See* Final Report of the Advisory Committee, note 21 *supra,* at p. 92–93.

Exchange Act information and reports as if it was subject to the Exchange Act reporting requirements in the context of an ongoing reporting exemption relating to compensatory employee stock options.[65] As such, we believe that the scope of information that the optionholders will be provided under the exemption is not inconsistent with investor protection and the public interest.[66]

One commenter objected to the proposed condition that the issuer make its books and records available for inspection by the optionholder and holders of shares received on exercise of compensatory employee stock options to the same extent that they are available to other shareholders of the issuer.[67] This commenter stated that such a requirement may go beyond or be inconsistent with state law requirements. We are not adopting the books and records element of the information condition. We believe that holders of such shares can exercise their state law rights to inspect corporate books and records. Moreover, because optionholders, as such, are not shareholders, we agree with the commenter that it is not necessary to extend the books and records inspection right to them if it is not already provided for under applicable state law.

To permit issuers to safeguard proprietary or confidential information that may be contained in the information to be provided, the exemption will permit provision of the disclosure to be conditioned on the optionholder agreeing to maintain the confidentiality of the information.[68] In response to a commenter,[69] we are not adopting the proposed provision that would have required an issuer to allow inspection of the documents at one of the described issuer offices if an optionholder chooses not to enter into such a confidentiality agreement. Under the exemption, as adopted, the issuer is not required to provide the information to a particular optionholder if the holder does not agree to keep the information to be provided pursuant to the exemption confidential.[70] Therefore, the exemption, as adopted, permits an issuer to take steps to protect the confidentiality of its information.

The proposal also would have required that the issuer provide the required information to holders of shares received on exercise of options. We have revised the information condition to apply only to optionholders in light of concern regarding the potential misuse of information by non-employees or former employees of a company.[71] The amendments, as adopted, do not condition the exemption on transferability restrictions on the underlying shares similar to those applicable to the compensatory employee stock options. One commenter expressed concern that the information delivery conditions would treat these company shareholders differently than other company shareholders.[72] Since the exemption applies only to the compensatory employee stock options and not to the shares received on exercise of the compensatory employee stock options, we believe our revisions should address concerns in this regard and provide companies flexibility in addressing confidentiality and share transferability issues.

6. Issuer Obligation To Impose the Conditions to the Exemption

We are adopting essentially as proposed the requirement that, for the exemption to be available, a private, non-reporting issuer must include the necessary limitations and conditions in the written stock option plans, within the terms of the individual written option agreements, or in another enforceable written agreement. Some commenters were concerned about the need to include the conditions and obligations in option plans or option agreements and one commenter suggested that the conditions and restrictions should only have to be satisfied in practice.[73] We believe that the nature of the exemption necessitates the inclusion of the conditions to the exemption in an enforceable written agreement or agreements between the issuer and the optionholders, or in the issuer's by-laws or certificate of incorporation. By allowing the conditions and obligations to be included in any enforceable written agreement or in the issuer's certificate of incorporation or by-laws, we also believe that the modified condition will provide issuers necessary flexibility in where to include the conditions in their agreements with optionholders.

B. Exemption for Compensatory Employee Stock Options of Exchange Act Reporting Issuers

To provide certainty regarding the obligations of issuers that already have registered securities under the Exchange Act or are required to file reports under the Exchange Act pursuant to Exchange Act Section 15(d), we are adopting an exemption from Exchange Act registration for compensatory employee stock options of these reporting issuers.[74] While the proposed exemption would have been available only for an issuer that had registered under Exchange Act Section 12 the class of equity security underlying the compensatory employee stock options, in response to comment,[75] we are expanding the eligibility for this exemption to all issuers required to file periodic reports pursuant to Exchange

[65] As the Commission also recognized when it adopted the Securities Act Rule 701 amendments in 1999, and because many issuers that have 500 or more optionholders and more than $10 million in assets are likely to have received venture capital financing (*see* for example the data in the Hand Paper, note 11 *supra*), we believe that many of these issuers already have prepared the type of disclosure required in their normal course of business, either for using other exemptions, such as Regulation D, or for other purposes. As a result, the disclosure requirement generally will be less burdensome for them. In adopting the amendments to Securities Act Rule 701, we stated that a minimum level of disclosure was essential to meet even the reduced level of information needed to inform compensatory-type investors such as employees and consultants. *See* Rule 701 Release, note 11 *supra.*

[66] For a private, non-reporting issuer with a significant number of optionholders (and with more than $10 million in assets at the end of its fiscal year), we believe it is likely that such issuer either already is obligated to provide the same information to optionholders due to sales of securities in reliance on Securities Act Rule 701 or already prepares and, as such, provides such information to its shareholders. One commenter also stated that many private, non-reporting issuers prepare financial statements, including audited financial statements, for other purposes. *See* letter from E&Y. Moreover, because of the transferability restrictions on the compensatory employee stock options and, prior to exercise, the shares to be received on exercise of those options, optionholders will have limited investment decisions to make, until the issuer becomes subject to the reporting requirements of the Exchange Act or is engaged in an acquisition transaction affecting the options. Consequently, we believe that the disclosure required under the exemption is the appropriate level of disclosure to be provided optionholders until the issuer becomes subject to the reporting requirements of the Exchange Act or is no longer relying on the exemption.

[67] *See* letter from ABA.

[68] This provision is consistent with the related information provision under Securities Act Rule 701.

[69] *See* letter from ABA.

[70] This provision does not affect an issuer's information delivery obligation under Securities Act Rule 701.

[71] *See* letter from ABA.

[72] *See* letter from ABA.

[73] *See, e.g.,* letters from ABA, Drinker, and Ross. While one commenter suggested eliminating any requirement for the conditions to be embodied in an agreement (*see* letter from ABA), we believe that the condition must be enforceable by the optionholder. Further, we believe the issuer must have written evidence that it satisfies this condition.

[74] We believe the exemption will provide important guidance regarding, and an appropriate exemption to, eligible issuers from the Exchange Act registration requirement for compensatory employee stock options.

[75] *See* letter from ABA.

Act Section 13 or Exchange Act Section 15(d). The filing of Exchange Act reports pursuant to Exchange Act Sections 13 or 15(d) will provide the appropriate information to optionholders.

As with the exemption for private, non-reporting issuers, the exemption for issuers subject to the reporting requirements of the Exchange Act will be available only where the options are issued pursuant to a written compensatory stock option plan. We have revised the exemption, in response to comment,[76] to provide that the class of persons eligible to receive or hold compensatory employee stock options under the stock option plans includes those participants permitted to be granted options under an issuer's Form S–8, as well as to those participants permitted under Securities Act Rule 701.[77] We have made this change to take into account the fact that, for a reporting issuer, compensatory employee stock options may have been granted before, and may be granted after, the issuer becomes subject to the Exchange Act reporting requirements.

We also have modified the optionholder eligibility condition to address the concerns of some commenters that the exemption still should be available to reporting issuers even where a small number of optionholders may not necessarily fall within the permitted categories of optionholders.[78] We are adopting a provision that will permit the exemption to continue to be available even if there is an insignificant deviation from satisfying the eligibility conditions of the exemption.[79] This provision will allow reporting issuers to rely on the exemption if the number of optionholders that do not meet the eligibility condition are insignificant both as to the aggregate number of optionholders and number of outstanding options. Further, following the effective date of the exemption, to be able to rely on the exemption, including the insignificant deviation provision, the issuer must have made a good faith and reasonable attempt to comply with the conditions of the exemption.

The exemption from Section 12(g) registration for compensatory employee stock options of Exchange Act reporting issuers does not include any information conditions, other than those arising from the registration of a class of security under the Exchange Act or arising under Exchange Act Section 15(d).

We are not conditioning the availability of the exemption on the issuer being current in its Exchange Act reporting. As we noted in the proposing release, we believe it would seem inappropriate for the issuer to lose the exemption, and be required to register a class of compensatory employee stock options under Exchange Act Section 12(g), because it was late in filing a required Exchange Act report and, for the days before that report was filed, was not ''current'' in its Exchange Act reporting. One commenter agreed with this approach.[80]

While we had proposed that the exemption apply only where the issuers had registered the class of equity security underlying the compensatory employee stock options, which would provide optionholders the protections of Exchange Act Sections 13(e)[81] and 14(e),[82] we agree with one commenter that the exemption should be available to all issuers required to file periodic reports under the Exchange Act.[83] For those issuers required to file periodic reports pursuant to Exchange Act Section 15(d), the exemption will no longer be available once their obligation to file reports under Exchange Act Section 15(d) is suspended. In that case, to maintain the exemption, the issuer would have to register a class of security under Exchange Act Section 12.

We believe that once an issuer has 500 or more optionholders it is more likely that it will have 500 or more holders of the shares underlying the options and therefore will be required to register that class under Exchange Act Section 12 if it also has more than $10 million in assets. In addition, if the issuer becomes a private, non-reporting issuer due to the suspension or termination of its reporting obligation, it may rely on the exemption for the compensatory employee stock options of private, non-reporting issuers if the conditions to that exemption are satisfied.

C. Registering When No Longer Eligible for Exemption

If a private, non-reporting issuer becomes ineligible to rely on the exemption, the issuer will be permitted up to 120 calendar days from the date it became ineligible to rely on the exemption to file a registration statement to register under Exchange Act Section 12(g) the class of compensatory employee stock options. For a reporting issuer that becomes ineligible to rely on the exemption, the issuer will be permitted up to 60 calendar days from the date it became ineligible to rely on the exemption to file a registration statement to register under Exchange Act Section 12(g) the class of compensatory employee stock options or a class of security. We have revised the transition provision for private, non-reporting issuers in response to a commenter's concern that 60 days would not be sufficient for private, non-reporting issuers to prepare a Form 10 registration statement including audited financial statements.[84] We have retained the 60 day time period for reporting issuers because they already would have been required to prepare and file periodic reports under the Exchange Act, including audited financial statements.

III. Paperwork Reduction Act

A. Background

Certain provisions of the amendments to Exchange Act Rule 12h–1[85] contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[86] We published a notice requesting comment on the collection of information requirements in the Proposing Release and submitted these to the Office of Management and Budget (''OMB'') for review and approval in accordance with the PRA.[87] OMB approved the collection and the control number is 3235–0632. An agency may not conduct or sponsor, and a person is

[76] *See* letter from ABA.

[77] This expansion will make the categories of eligible optionholders consistent under both exemptions. *See* the discussion under ''Eligible Option Plan Participants,'' above, for a description of the eligible optionholders.

[78] *See* letters from ABA, Drinker, and Ross. Commenters noted that options could be held by persons that previously had been granted options by the issuer, or by another entity acquired by the issuer. One commenter also was concerned about options held by former employees of an acquired entity who would not be considered eligible optionholders under Form S–8.

[79] While we are allowing the exemption to be available to reporting issuers that have insignificant deviations from the eligibility conditions, we are not adopting a similar provision for private, non-reporting issuers. We believe this distinction is appropriate because reporting issuers are subject to all of the disclosure requirements under the periodic reporting rules of the Exchange Act and also are subject to staff review. The concept of allowing an insignificant deviation from required conditions also is included in Regulation D and Regulation A under the Securities Act [17 CFR 230.260 and 17 CFR 230.508]. We believe that issuers are familiar with the concept under the Securities Act and applying a similar concept to the exemption under the Exchange Act will assist issuers in avoiding unintentional failures to satisfy the exemption conditions.

[80] *See* letter from ABA.

[81] 15 U.S.C. 78m(e).

[82] 15 U.S.C. 78n(e).

[83] *See* letter from ABA. Exchange Act Section 14(e) would, of course, continue to apply regardless of whether the issuer had registered the class of equity security underlying the compensatory employee stock options.

[84] *See* letter from ABA.

[85] 17 CFR 240.12h–1.

[86] 44 U.S.C. 3501 *et seq.*

[87] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

not required to respond to, a collection of information unless it displays a currently valid OMB control number. The title for this information is:

- Exchange Act Rule 12h–1.

The hours and costs associated with preparation of notices, maintaining Internet sites, and preparation of information to be disclosed to optionholders for private, non-reporting issuers relying on the exemption from Exchange Act Section 12(g) [88] registration constitute cost burdens imposed by the collection of information. The exemption available to reporting issuers will not constitute new collections of information. The amendments will not affect existing collections of information.

The exemptions from Exchange Act Section 12(g) registration are being adopted pursuant to the Exchange Act. The information collection requirements related to the exemption for private, non-reporting issuers are a condition to reliance on the exemption. There is no mandatory retention period for the information disclosed and the information disclosed is not required to be filed with the Commission.

B. Summary of Collection of Information

Our amendments to Exchange Act Rule 12h–1 will provide an exemption for private, non-reporting issuers from Exchange Act Section 12(g) registration for compensatory employee stock options issued under employee stock option plans. The amendments also will provide an exemption from Exchange Act Section 12(g) registration for compensatory employee stock options of issuers that are subject to the periodic reporting requirements of the Exchange Act pursuant to Exchange Act Section 13 or Section 15(d).

The requirements regarding notice of information availability, Internet availability of information, and, for certain issuers, the preparation of information related to the exemption from Exchange Act Section 12(g) for compensatory employee stock options of private, non-reporting issuers constitute a new collection of information under the Exchange Act. The information provision in the exemption for private, non-reporting issuers is not a new collection of information for those private, non-reporting issuers that also are required to provide such information to optionholders pursuant to Securities Act Rule 701 [89] or that already prepare and provide such information to their shareholders.

The collection of information is required for those private, non-reporting issuers that rely on the exemption because they had 500 or more optionholders and more than $10 million in assets at the end of their fiscal year. The issuers likely to use the exemption are those private, non-reporting issuers that had more than $10 million in assets and had used stock options to compensate employees, directors, consultants, and advisors on a broad basis. The exemption from Section 12(g) registration for compensatory employee stock options of reporting issuers that are subject to the periodic reporting requirements of the Exchange Act pursuant to Exchange Act Section 13 or Section 15(d) does not impose any new collection of information on these reporting issuers.

C. Summary of Comments

None of the commenters addressed our request for comment on the PRA analysis and, accordingly, we have not revised our PRA estimates.

D. Paperwork Reduction Act Burden Estimates

For purposes of the PRA, we estimate that the annual burden for responding to the collection of information in the exemption will not increase significantly for most private, non-reporting issuers, due to the current disclosure provisions of Securities Act Rule 701 and the probability that such issuers already prepare such information for other purposes. The costs may increase for those private, non-reporting issuers who are not relying on Securities Act Rule 701 when they grant compensatory employee stock options or who do not prepare the information for other purposes. The cost of providing such information may increase because of the requirement in the exemption for private, non-reporting issuers to provide the required information.

Our estimates represent the burden for private, non-reporting issuers eligible to rely on the exemption. Because the registration provisions of Exchange Act Section 12(g) apply only to an issuer with 500 or more holders of record of a class of equity security and assets in excess of $10 million at the end of its most recently ended fiscal year, only those private, non-reporting issuers satisfying those thresholds will be subject to the collection of information. The Division of Corporation Finance has granted no-action relief from registration of compensatory employee stock options to 30 private, non-reporting issuers during the period 1992 through 2006. If we assume that approximately 3 new private, non-reporting issuers will be relying on the exemption each year and that a certain number of private, non-reporting issuers will no longer be relying on the exemption because they have become reporting issuers, have been acquired, or have terminated business, we estimate that approximately 40 private, non-reporting issuers each year may be relying on the exemption. The exemption for private, non-reporting issuers would terminate once such issuer became subject to the reporting requirements of the Exchange Act or was no longer relying on the exemption. Thus, the number of private, non-reporting issuers that may rely on the exemption may vary from year to year.

For purposes of the PRA, we estimate the annual paperwork burden for private, non-reporting issuers desiring to rely on the exemption and to comply with our collection of information requirements to be approximately 20 hours of in-house issuer personnel time and to be approximately $24,000 for the services of outside professionals.[90] These estimates include the time and the cost of preparing and reviewing the information and making the information available to optionholders. We assume that the same number of private, non-reporting issuers will rely on the exemption each year.

We estimate that 25% of the burden of preparation and provision of the information required by the exemption is carried by the issuer internally and that 75% of the burden is carried by outside professionals retained by the issuer at an average cost of $400 per hour.[91] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the issuer internally is reflected in hours.

IV. Cost-Benefit Analysis

A. Background

Compensatory stock options provide a method to use non-cash compensation to attract, retain, and motivate issuer employees, directors and consultants. Since the 1990s, a number of private, non-reporting issuers have granted

[88] 15 U.S.C. 78*l*(g).

[89] 17 CFR 230.701.

[90] For administrative convenience, the presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest hundred.

[91] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $400 as the average cost of outside professionals that assist issuers in preparing disclosures for offerings.

compensatory employee stock options to 500 or more employees, directors, and consultants. Compensatory employee stock options also are used routinely by issuers required to report under the Exchange Act.

Stock options, including stock options issued to employees under stock option plans, are a separate class of equity security for purposes of the Exchange Act. Under Exchange Act Section 12(g), an issuer with 500 or more holders of record of a class of equity security and assets in excess of $10 million at the end of its most recently ended fiscal year must register that class of equity security, unless there is an available exemption from registration. While there is an exemption from Exchange Act Section 12(g) registration for interests and participations in certain other types of employee compensation plans involving securities, currently there is no exemption for compensatory employee stock options.

B. Summary of Amendments

We are adopting two exemptions from the registration provisions of Exchange Act Section 12(g) for compensatory employee stock options issued under employee stock option plans that are limited to employees, directors, consultants, and advisors of the issuer.

One amendment to Exchange Act Rule 12h–1 will provide an exemption from Exchange Act Section 12(g) registration for compensatory employee stock options of an issuer that does not have a class of securities registered under Exchange Act Section 12 and is not subject to the reporting requirements of Exchange Act Section 15(d), where the following conditions are present:

- Eligible optionholders are limited to employees, directors, consultants, and advisors of the issuer, its parents, or majority-owned subsidiaries of the issuer or its parents and permitted transferees;
- Transferability by optionholders of compensatory employee stock options and, prior to exercise, the shares to be received on exercise of those options is restricted; and
- Risk and financial information is provided to optionholders that is of the type that would be required under Securities Act Rule 701 if securities sold in reliance on Securities Act Rule 701 exceeded $5 million in a 12-month period.

The second amendment to Exchange Act Rule 12h–1 will provide an exemption for compensatory employee stock options of issuers that are required to file reports under the Exchange Act pursuant to Exchange Act Section 13 or Exchange Act Section 15(d).

1. Expected Benefits

Benefits of the exemption for private, non-reporting issuers are likely to include the following: (1) Lower costs to, and reduced uncertainty for, private, non-reporting issuers desiring relief from registration under Section 12(g) for compensatory employee stock options issued to employees, directors, consultants, and advisors for compensatory purposes; (2) benefits to private, non-reporting issuers in designing and implementing employee stock option plans without regard to concerns arising from Exchange Section 12(g) registration of the compensatory employee stock options; (3) benefits to private, non-reporting issuers arising from the use of electronic or Internet-based methods of providing the information necessary to satisfy the information requirement of the exemption; and (4) benefits to optionholders of private, non-reporting issuers arising from the required provision of information under the exemption.

Private, non-reporting issuers would benefit from cost savings as a result of the exemption from Section 12(g) registration of their compensatory employee stock options. A number of private, non-reporting issuers that have 500 or more optionholders and assets in excess of $10 million have hired attorneys and requested no-action relief from the Division of Corporation Finance with regard to the registration of the options. The conditions to no-action relief from the Division include information provision conditions that are more extensive than in the exemption. The exemption, which is available if the provisions of the exemption are satisfied, will reduce the legal and other costs to a private, non-reporting issuer arising from the no-action request and relief. Such cost savings include reduced legal and accounting fees arising from both the request for no-action relief and for preparation of reports equivalent to Exchange Act reports of a reporting issuer on an ongoing basis. Because we expect that a number of the issuers that may take advantage of the exemption may be smaller issuers, these cost savings could be significant relative to revenues.

The amendments require the same information that the issuer otherwise would be required to provide if securities sold in reliance on Securities Act Rule 701 exceeded $5 million during any consecutive 12-month period. Thus, for private, non-reporting issuers with a significant number of optionholders (and with more than $10 million in assets at the end of its fiscal year), it is likely that such issuer either already is obligated to provide the same information to optionholders due to sales of securities in reliance on Securities Act Rule 701, or already prepares and, as such, provides such information to its shareholders.[92] Further, any private, non-reporting issuer that has received no-action relief regarding registration of its compensatory employee stock options will face reduced disclosure costs under the exemption.

The amendment also will benefit private, non-reporting issuers by providing the less expensive alternative of electronic or Internet-based methods of providing the information necessary to satisfy the information requirement of the exemption.

Private, non-reporting issuers also will benefit from the certainty that the exemption will provide in designing and implementing compensation programs and employee stock option plans. The amendments identify the eligibility provisions and transfer restrictions that need to be contained in compensatory stock option plans or other written agreements, thereby lessening the need for issuers, at the time that Section 12(g) registration relief is needed for the compensatory employee stock options, to amend their stock option plans and outstanding options to include provisions that would be necessary to obtain no-action relief. The exemption will help private, non-reporting issuers avoid becoming subject to the registration and reporting requirements of the Exchange Act prior to the time they have public shareholders.

Optionholders also will benefit from the exemption. The exemption assures the provision of the information every six months, including financial information that is not more than 180 days old, to optionholders. Employees, directors, consultants, and advisors would benefit from the exemption because private, non-reporting issuers will be able to use options for compensatory purposes without concern that the option grants will subject the issuer to Exchange Act registration.

The exemption for reporting issuers also will benefit optionholders and holders of shares received on exercise of

[92] One commenter noted that ''they expect that most non-public companies with the number of compensatory optionholders necessary to benefit from the proposed exemption are likely to already be obtaining audited financial statements for other business and financial purposes.'' Letter from E&Y.

options. Optionholders and holders of shares received on exercise of options will have access to the issuer's publicly filed Exchange Act reports. Further, if the issuer has registered under Exchange Act Section 12 the class of equity security underlying the compensatory employee stock options, certain provisions of Exchange Act Sections 13 and 14 would apply to the options and the securities issuable on exercise of the options. Holders of shares issued on exercise of those options would have the same rights as other shareholders of the issuer. Thus, the exemption eliminates a possible disincentive for issuers to use certain compensatory employee stock options. This may be a benefit if this type of compensation is useful in attracting and retaining qualified employees that increase the issuer's competitiveness.

2. Expected Costs

Issuers will be required to satisfy the provisions of the amendments to avoid registering under Exchange Act Section 12(g) their compensatory employee stock options if the registration thresholds are met at the end of the issuer's fiscal year. Private, non-reporting issuers may incur certain costs to rely on the exemption including (1) costs to amend their existing employee stock option plans if the plans and option grants do not contain the restrictive and information provisions of the exemption; (2) costs arising from preparing and providing the information required by the exemption to the extent that the issuer does not already prepare or provide such information for other purposes; and (3) costs of maintaining an Internet site on which the information may be available if the issuer chooses to use that method to provide the required information to optionholders.

We believe that the provisions of the exemption are consistent in many respects with the restrictive provisions of other laws and rules governing option grants and, thus, the costs to private, non-reporting issuers should not be increased. The exemption provisions also are consistent with or are more flexible than the existing conditions for obtaining no-action relief from the Division of Corporation Finance. Therefore, the costs to private, non-reporting issuers to prepare the information required by the exemption may be the same or less than the current costs to the issuer relying on registration relief provided in a no-action letter issued by the Division of Corporation Finance.

Those private, non-reporting issuers who do not already prepare the required information will face costs if they desire to avail themselves of the exemption. In addition to the costs discussed in the Paperwork Reduction Act analysis,[93] as described below, issuers may face costs in maintaining the confidentiality of the information required to be provided, including preparation and enforcement of confidentiality agreements entered into with optionholders. It should be noted, however, that these increased costs will be borne voluntarily, as it is within the issuer's control as to the number of optionholders it may have. Issuers are able to perform their own cost-benefit analysis to determine whether to comply with the conditions to the exemption or avoid issuing options to 500 or more optionholders.

Private, non-reporting issuers may incur costs in providing the information required under the exemption. These costs may include printing and sending the information or making the information available on an Internet site.

The Division of Corporation Finance has granted no-action relief from registration of compensatory employee stock options to 30 private, non-reporting issuers during the period 1992 through 2006. If we assume that approximately 3 new private, non-reporting issuers will be relying on the exemption each year and that a certain number of private, non-reporting issuers will no longer be relying on the exemption because they have become reporting issuers, have been acquired, or have terminated business, we estimate that approximately 40 private, non-reporting issuers each year may be relying on the exemption. The exemption for private, non-reporting issuers will terminate once such issuer becomes subject to the reporting requirements of the Exchange Act or is no longer relying on the exemption. Thus, the number of private, non-reporting issuers that may rely on the exemption may vary from year to year.

For purposes of the Paperwork Reduction Act, we have estimated that the annual paperwork burden for private, non-reporting issuers desiring to rely on the exemption and to comply with our collection of information requirements to be approximately 20 hours of in-house issuer personnel time, which is equivalent to $3,500, and to be approximately $24,000 for the services of outside professionals, for a total paperwork burden cost of $27,500.[94] These estimates include the time and the cost of preparing and reviewing the information and making the information available to optionholders. We have assumed that the same number of private, non-reporting issuers would rely on the exemption each year. We have estimated that 25% of the burden of preparation and provision of the information required by the exemption would be carried by the private, non-reporting issuer internally and that 75% of the burden would be carried by outside professionals retained by the private, non-reporting issuer at an average cost of $400 per hour.[95]

Although a private, non-reporting issuer relying on the exemption will benefit from cost savings associated with not having to register the compensatory employee stock options as a separate class of equity security under the Exchange Act, or obtaining no-action relief, by not doing so, an optionholder will not have the benefit of the disclosures contained in Exchange Act reports that the issuer otherwise would be obligated to file with us, including audited financial statements, or the disclosures required to be provided under the terms of the no-action relief.

Optionholders also will not be able to freely sell their options while the private, non-reporting issuer is relying on the exemption. Optionholders will not be able realize value from the options or, prior to exercise of the options, the shares to be issued on exercise of the options until after the private, non-reporting issuer becomes subject to the reporting requirements of the Exchange Act or is not relying on the exemption, other than as a result of certain permitted transfers. Many private, non-reporting issuers that grant options, however, currently restrict the transfer of securities held by holders of shares received on exercise of options, in most cases until after the issuer becomes subject to the reporting requirements of the Exchange Act or unless the issuer is acquired by another entity. In some cases, private, non-reporting issuers retain the right to repurchase options or shares received on exercise of an option. Any exercise of such repurchase right by the issuer would be a cost to such issuer.

[93] *See* discussion under ''PAPERWORK REDUCTION ACT,'' above.

[94] For administrative convenience, the presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest hundred.

[95] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $400 as the average cost of outside professionals that assist issuers in preparing disclosures and conducting registered offerings. Consistent with recent rulemaking releases, we estimate the value of work performed by the company internally at a cost of $175 per hour.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation Analysis

Section 23(a)(2) [96] of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. We are adopting an exemption for private, non-reporting issuers from Exchange Act Section 12(g) registration for compensatory employee stock options issued under employee stock option plans. We also are adopting an exemption from Exchange Act Section 12(g) registration for compensatory employee stock options of issuers that are subject to the reporting requirements of the Exchange Act pursuant to Exchange Act Section 13 or Exchange Act Section 15(d).

We expect that the exemption for private, non-reporting issuers from Exchange Act registration of compensatory employee stock options will provide necessary certainty to those issuers in their compensation decisions and will help them avoid becoming subject to the registration and reporting requirements of the Exchange Act prior to the time they have public shareholders. We anticipate that the exemption would save such private, non-reporting issuers costs and will not require that companies make their confidential issuer information public prior to the issuer voluntarily determining to become a public reporting issuer or being required to register a class of equity security under the Exchange Act. Further, we anticipate that the exemption will continue to provide private, non-reporting issuers freedom to determine appropriate methods of compensating their employees, directors, consultants, and advisors without concern that they will be required to register their compensatory employee stock options as a class of equity security under Exchange Act Section 12. Thus, the exemption eliminates a possible disincentive for issuers to use certain compensatory employee stock options. This may be a benefit if this type of compensation is useful in attracting and retaining qualified employees that increase the private, non-reporting issuer's competitiveness.

[96] 15 U.S.C. 78w(a)(2).

The exemption for reporting issuers will provide certainty regarding the obligations of issuers that already are subject to the reporting requirements of the Exchange Act pursuant to Exchange Act Section 13 or Exchange Act Section 15(d) to register their compensatory employee stock options under the Exchange Act. In addition, in the case of these reporting issuers, the optionholders would have access to the issuer's publicly filed Exchange Act reports and, if the issuer has registered under Exchange Act Section 12 the class of equity security underlying the options, the appropriate provisions of Sections 13 and 14 would apply to the compensatory employee stock options and the equity securities issuable on exercise of those options.

Section 3(f) [97] of the Exchange Act requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

We believe that the exemption from Exchange Act registration for the compensatory stock options may beneficially affect the issuer's ability to compete for employees because it will allow such issuers to continue to use employee stock options in their compensation programs, thus enabling them to compete for such employees with both private, non-reporting issuers and public reporting issuers. The exemption also will provide an eligible issuer a more efficient, available exemption from Exchange Act Section 12(g) registration of compensatory employee stock options, instead of such issuer having to seek no-action relief or an exemptive order under Exchange Act Section 12(h).

The exemptions do not relate to or affect capital formation, as the compensatory employee stock options covered by the exemptions are issued for compensatory and not capital raising purposes.

The exemptions will allow eligible issuers to continue to have freedom to determine appropriate methods of compensating their employees, directors, consultants, and advisors. For private, non-reporting issuers, these compensation decisions could be made without concern that the issuer will become subject to the Exchange Act reporting requirements before they have public shareholders.

[97] 15 U.S.C. 78c(f).

VI. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the two exemptions from the registration provisions of Exchange Act Section 12(g) for compensatory employee stock options issued under employee stock option plans that are limited to employees, directors, consultants, and advisors of the issuer, its parents, and the majority-owned subsidiaries of the issuer or its parents will not have a significant economic impact on a substantial number of small entities. We prepared an Initial Regulatory Flexibility Act Analysis in which we stated that the proposed exemption would not affect issuers that are small entities because small entities do not satisfy the asset threshold of Section 12(g) and therefore the exemptions would not be needed by such entities until their asset size increased to more than $10 million at the end of a fiscal year. We stated, therefore, that there may not be a large number of small entities that may be impacted. Because we received no comment disagreeing with that conclusion we are certifying that the two exemptions will not have a significant economic impact on a substantial number of small entities.

VII. Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act generally provides that, unless an exception applies, a substantive rule may not be made effective less than 30 days after notice of the rule has been published in the **Federal Register**. One exception to the 30-day requirement is if such rule grants or recognizes an exemption or relieves a restriction. We are adopting two exemptions designed to relieve issuers from the registration requirements of Section 12(g) for compensatory employee stock options. The rules only affect issuers that issue stock options as compensation to their employees, directors, consultants, and advisors. Even after the rules are effective, issuers may still register the compensatory employee stock options under Exchange Act Section 12(g) as before; however, the new amendments to Exchange Act Rule 12h–1 grant exemptions to the requirement, relieving eligible issuers of the Exchange Act registration obligations, subject to certain conditions. Immediate effectiveness will provide certainty to issuers that provide compensatory employee stock options to their current or future employees, directors, consultants, and advisors as a form of compensation. Eligible issuers that satisfy the conditions to the exemptions can make compensation decisions without having to register under Exchange Act Section 12(g) the compensatory employee stock options or seek a no-action letter from the staff of the Commission or an exemption under Section 12(h) from the Commission for such registration relief.

VIII. Statutory Basis and Text of Rule Amendments

We are amending Exchange Act Rule 12h–1 under the authority in Sections 12, 23, and 36 of the Exchange Act, as amended.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Rule

■ For the reasons set out in the preamble, we are amending Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 240.12h-1 to remove ‘‘and’’ at the end of paragraph (d), and add paragraphs (f) and (g) to read as follows:

§ 240.12h–1 Exemptions from registration under section 12(g) of the Act.

* * * * *

(f)(1) Stock options issued under written compensatory stock option plans under the following conditions:

(i) The issuer of the equity security underlying the stock options does not have a class of security registered under section 12 of the Act and is not required to file reports pursuant to section 15(d) of the Act;

(ii) The stock options have been issued pursuant to one or more written compensatory stock option plans established by the issuer, its parents, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer's parents;

Note to paragraph (f)(1)(ii): All stock options issued under all written compensatory stock option plans on the same class of equity security of the issuer will be considered part of the same class of equity security for purposes of the provisions of paragraph (f) of this section.

(iii) The stock options are held only by those persons described in Rule 701(c) under the Securities Act (17 CFR 230.701(c)) or their permitted transferees as provided in paragraph (f)(1)(iv) of this section;

(iv) The stock options and, prior to exercise, the shares to be issued on exercise of the stock options are restricted as to transfer by the optionholder other than to persons who are family members (as defined in Rule 701(c)(3) under the Securities Act (17 CFR 230.701(c)(3)) through gifts or domestic relations orders, or to an executor or guardian of the optionholder upon the death or disability of the optionholder until the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Act or is no longer relying on the exemption pursuant to this section; provided that the optionholder may transfer the stock options to the issuer, or in connection with a change of control or other acquisition transaction involving the issuer, if after such transaction the stock options no longer will be outstanding and the issuer no longer will be relying on the exemption pursuant to this section;

Note to paragraph (f)(1)(iv): For purposes of this section, optionholders may include any permitted transferee under paragraph (f)(1)(iv) of this section; provided that such permitted transferees may not further transfer the stock options..

(v) The stock options and the shares issuable upon exercise of such stock options are restricted as to any pledge, hypothecation, or other transfer, including any short position, any ‘‘put equivalent position’’ (as defined in § 240.16a–1(h) of this chapter), or any ‘‘call equivalent position’’ (as defined in § 240.16a–1(b) of this chapter) by the optionholder prior to exercise of an option, except in the circumstances permitted in paragraph (f)(1)(iv) of this section, until the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Act or is no longer relying on the exemption pursuant paragraph (f)(1) of this section; and

Note to paragraphs (f)(1)(iv) and (f)(1)(v): The transferability restrictions in paragraphs (f)(1)(iv) and (f)(1)(v) of this section must be contained in a written compensatory stock option plan, individual written compensatory stock option agreement, other stock purchase or stockholder agreement to which the issuer and the optionholder are a signatory or party, other enforceable agreement by or against the issuer and the optionholder, or in the issuer's by-laws or certificate or articles of incorporation.

(vi) The issuer has agreed in the written compensatory stock option plan, the individual written compensatory stock option agreement, or another agreement enforceable against the issuer to provide the following information to optionholders once the issuer is relying on the exemption pursuant to paragraph (f)(1) of this section until the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Act or is no longer relying on the exemption pursuant paragraph (f)(1) of this section:

The information described in Rules 701(e)(3), (4), and (5) under the Securities Act (17 CFR 230.701(e)(3), (4), and (5)), every six months with the financial statements being not more than 180 days old and with such information provided either by physical or electronic delivery to the optionholders or by written notice to the optionholders of the availability of the information on an Internet site that may be password-protected and of any password needed to access the information.

Note to paragraph (f)(1)(vi): The issuer may request that the optionholder agree to keep the information to be provided pursuant to this section confidential. If an optionholder does not agree to keep the information to be provided pursuant to this section confidential, then the issuer is not required to provide the information.

(2) If the exemption provided by paragraph (f)(1) of this section ceases to be available, the issuer of the stock options that is relying on the exemption provided by this section must file a registration statement to register the class of stock options under section 12 of the Act within 120 calendar days after the exemption provided by paragraph (f)(1) of this section ceases to be available; and

(g)(1) Stock options issued under written compensatory stock option plans under the following conditions:

(i) The issuer of the equity security underlying the stock options has registered a class of security under section 12 of the Act or is required to file periodic reports pursuant to section 15(d) of the Act;

(ii) The stock options have been issued pursuant to one or more written compensatory stock option plans established by the issuer, its parents, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer's parents;

Note to paragraph (g)(1)(ii): All stock options issued under all of the written compensatory stock option plans on the same class of equity security of the issuer will be considered part of the same class of equity security of the issuer for purposes of the provisions of paragraph (g) of this section.

(iii) The stock options are held only by those persons described in Rule 701(c) under the Securities Act (17 CFR 230.701(c)) or those persons specified in General Instruction A.1(a) of Form S–8 (17 CFR 239.16b); provided that an issuer can still rely on this exemption if there is an insignificant deviation from satisfaction of the condition in this paragraph (g)(1)(iii) and after December 7, 2007 the issuer has made a good faith and reasonable attempt to comply with the conditions of this paragraph (g)(1)(iii). For purposes of this paragraph (g)(1)(iii), an insignificant deviation exists if the number of optionholders that do not meet the condition in this paragraph (g)(1)(iii) are insignificant both as to the aggregate number of optionholders and number of outstanding stock options.

(2) If the exemption provided by paragraph (g)(1) of this section ceases to be available, the issuer of the stock options that is relying on the exemption provided by this section must file a registration statement to register the class of stock options or a class of security under section 12 of the Act within 60 calendar days after the exemption provided in paragraph (g)(1) of this section ceases to be available.

By the Commission.

Dated: December 3, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–23756 Filed 12–6–07; 8:45 am]

BILLING CODE 8011–01–P

Reader Aids

Federal Register

Vol. 72, No. 235

Friday, December 7, 2007

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 7, 2007

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Mediterranean fruit fly; published 12-7-07
DEFENSE DEPARTMENT
Defense Acquisition Regulations System
Acquisition regulations:
Ownership by contractor; patent rights; published 12-7-07
Technical amendment; published 12-7-07
DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Biobased products preference program; published 11-7-07
Federal computer network architecture; published 11-7-07
Part 27 rewrite in plain language; published 11-7-07
ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Crop Grouping Program; expansion; published 12-7-07
GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Biobased products preference program; published 11-7-07
Contracts containing construction requirements-contract pricing method references; labor standards; published 11-7-07
Federal computer network architecture; published 11-7-07
Part 27 rewrite in plain language; published 11-7-07
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Erythromycin; published 12-7-07
JUSTICE DEPARTMENT
Contraband drug evidence, destruction:
Liquid phencyclidine (PCP); proper handling and disposal; published 12-7-07
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Biobased products preference program; published 11-7-07
Contracts containing construction requirements-contract pricing method references; labor standards; published 11-7-07
Federal computer network architecture; published 11-7-07
Part 27 rewrite in plain language; published 11-7-07
SECURITIES AND EXCHANGE COMMISSION
Securities:
Compensatory employee stock options; registration requirements exemption; published 12-7-07

RULES GOING INTO EFFECT DECEMBER 8, 2007

HOMELAND SECURITY DEPARTMENT
Coast Guard
Regattas and marine parades:
Eastport Yacht Club Lights Parade; published 10-25-07

COMMENTS DUE NEXT WEEK

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific halibut and sablefish; comments due by 12-14-07; published 11-14-07 [FR E7-22237]
Northeastern United States fisheries—
Northeast multispecies; comments due by 12-14-07; published 11-14-07 [FR E7-22240]
Marine mammals:
Scientific research and enhancement activities—
Permits; issuance criteria,; comments due by 12-13-07; published 10-15-07 [FR E7-20229]
Sea turtle conservation—
Chain-mat modified gear and sea scallop dredge gear; incidental take in compliance with gear modification requirements; comments due by 12-10-07; published 11-9-07 [FR E7-22073]
ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection—
Refrigerant recovery and recycling equipment standards; comments due by 12-10-07; published 11-9-07 [FR E7-21941]
Refrigerant recovery and recyling equipment standards; comments due by 12-10-07; published 11-9-07 [FR E7-21943]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Furilazole; comments due by 12-10-07; published 10-10-07 [FR E7-19829]
Spinetoram; comments due by 12-10-07; published 10-10-07 [FR E7-19947]
Water programs:
Oil pollution prevention; spill prevention, control, and countermeasure rule requirements; comments due by 12-14-07; published 10-15-07 [FR E7-19701]
FEDERAL COMMUNICATIONS COMMISSION
Radio services, special:
Advanced wireless services in 2155-2175 MHz band; service rules; comments due by 12-14-07; published 11-14-07 [FR 07-05632]
Radio stations; table of assignments:
Arizona; comments due by 12-10-07; published 11-13-07 [FR E7-22119]
California; comments due by 12-10-07; published 11-13-07 [FR E7-22120]
Oklahoma; comments due by 12-10-07; published 11-13-07 [FR E7-22123]
FEDERAL RESERVE SYSTEM
Prohibition on funding of unlawful Internet gambling (Regulation GG):
Unlawful Internet Gambling Act of 2006; implementation; comments due by 12-12-07; published 10-4-07 [FR 07-04914]
HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations:
California; comments due by 12-10-07; published 10-11-07 [FR E7-19995]
Meetings:
Bellaire Bridge, Bellaire, OH; public hearing; comments due by 12-12-07; published 11-15-07 [FR E7-22351]
Regattas and marine parades:
Seventh Coast Guard District; recurring marine events; comments due by 12-13-07; published 11-13-07 [FR E7-21714]
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
HUD program requirements; waivers:
Pet ownership for the elderly and persons with disabilities; comments due by 12-14-07; published 10-15-07 [FR E7-20196]
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Peninsular bighorn sheep; comments due by 12-10-07; published 10-10-07 [FR 07-04959]
Findings on petitions, etc.—
Black-footed albatross; comments due by 12-10-07; published 10-9-07 [FR E7-19690]
Migratory bird hunting:
Alaska; 2008 subsistence harvest regulations; comments due by 12-14-07; published 10-15-07 [FR E7-20243]
LABOR DEPARTMENT
Occupational Safety and Health Administration
Occupational safety and health standards:
Emergency response and preparedness;

comprehensive standard; information request; comments due by 12-10-07; published 9-11-07 [FR E7-17771]

LIBRARY OF CONGRESS

Copyright Royalty Board, Library of Congress

Statutory licenses; rates and terms:

Digital performance right in sound recordings and ephemeral recordings for new subscription service; comments due by 12-10-07; published 11-9-07 [FR E7-22044]

PERSONNEL MANAGEMENT OFFICE

Absence and leave:

Transference of donated annual leave from an agency's voluntary leave bank program to an emergency leave program; comments due by 12-14-07; published 10-15-07 [FR E7-20205]

Federal Employees Dental and Vision Insurance Program:

Program administration and explanation of rules; comments due by 12-14-07; published 10-15-07 [FR E7-20193]

Prevailing rate systems; comments due by 12-14-07; published 11-14-07 [FR E7-22262]

POSTAL SERVICE

Domestic Mail Manual:

Automation, presorted, and carrier route flat-size mail; new address and barcode requirements; comments due by 12-10-07; published 10-10-07 [FR E7-19932]

Automation, presorted, and carrier route rate letters; new address requirements; comments due by 12-10-07; published 10-10-07 [FR E7-19931]

SECURITIES AND EXCHANGE COMMISSION

Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):

Mandatory electronic submission of Investment Company Act applications and Regulation E filings; comments due by 12-14-07; published 11-9-07 [FR E7-21911]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 12-10-07; published 11-9-07 [FR E7-21997]

Bombardier; comments due by 12-13-07; published 11-13-07 [FR E7-22103]

Dassault; comments due by 12-13-07; published 11-13-07 [FR E7-22102]

EADS SOCATA; comments due by 12-10-07; published 11-8-07 [FR E7-21782]

Pratt & Whitney; comments due by 12-10-07; published 10-10-07 [FR E7-19927]

Rogerson Aircraft Corp.; comments due by 12-10-07; published 10-25-07 [FR E7-21001]

Viking Air Ltd.; comments due by 12-14-07; published 11-14-07 [FR E7-22264]

Airworthiness standards:

Special conditions—

Boeing Model 757 series airplanes; comments due by 12-12-07; published 11-27-07 [FR E7-23079]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Brake hoses; comments due by 12-10-07; published 10-9-07 [FR E7-19474]

Electric powered vehicles; electrolyte spillage and electrical shock protection; comments due by 12-10-07; published 10-9-07 [FR E7-19735]

TREASURY DEPARTMENT

Prohibition on funding of unlawful Internet gambling:

Unlawful Internet Gambling Act of 2006; implementation; comments due by 12-12-07; published 10-4-07 [FR 07-04914]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2089/P.L. 110–121

To designate the facility of the United States Postal Service located at 701 Loyola Avenue in New Orleans, Louisiana, as the ''Louisiana Armed Services Veterans Post Office''. (Nov. 30, 2007; 121 Stat. 1349)

H.R. 2276/P.L. 110–122

To designate the facility of the United States Postal Service located at 203 North Main Street in Vassar, Michigan, as the ''Corporal Christopher E. Esckelson Post Office Building''. (Nov. 30, 2007; 121 Stat. 1350)

H.R. 3297/P.L. 110–123

To designate the facility of the United States Postal Service located at 950 West Trenton Avenue in Morrisville, Pennsylvania, as the ''Nate DeTample Post Office Building''. (Nov. 30, 2007; 121 Stat. 1351)

H.R. 3307/P.L. 110–124

To designate the facility of the United States Postal Service located at 570 Broadway in Bayonne, New Jersey, as the ''Dennis P. Collins Post Office Building''. (Nov. 30, 2007; 121 Stat. 1352)

H.R. 3308/P.L. 110–125

To designate the facility of the United States Postal Service located at 216 East Main Street in Atwood, Indiana, as the ''Lance Corporal David K. Fribley Post Office''. (Nov. 30, 2007; 121 Stat. 1353)

H.R. 3325/P.L. 110–126

To designate the facility of the United States Postal Service located at 235 Mountain Road in Suffield, Connecticut, as the ''Corporal Stephen R. Bixler Post Office''. (Nov. 30, 2007; 121 Stat. 1354)

H.R. 3382/P.L. 110–127

To designate the facility of the United States Postal Service located at 200 North William Street in Goldsboro, North Carolina, as the ''Philip A. Baddour, Sr. Post Office''. (Nov. 30, 2007; 121 Stat. 1355)

H.R. 3446/P.L. 110–128

To designate the facility of the United States Postal Service located at 202 East Michigan Avenue in Marshall, Michigan, as the ''Michael W. Schragg Post Office Building''. (Nov. 30, 2007; 121 Stat. 1356)

H.R. 3518/P.L. 110–129

To designate the facility of the United States Postal Service located at 1430 South Highway 29 in Cantonment, Florida, as the ''Charles H. Hendrix Post Office Building''. (Nov. 30, 2007; 121 Stat. 1357)

H.R. 3530/P.L. 110–130

To designate the facility of the United States Postal Service located at 1400 Highway 41 North in Inverness, Florida, as the ''Chief Warrant Officer Aaron Weaver Post Office Building''. (Nov. 30, 2007; 121 Stat. 1358)

H.R. 3572/P.L. 110–131

To designate the facility of the United States Postal Service located at 4320 Blue Parkway in Kansas City, Missouri, as the ''Wallace S. Hartsfield Post Office Building''. (Nov. 30, 2007; 121 Stat. 1359)

Last List November 20, 2007

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.